

# China and the rules of engagement in Antarctica

Chinese repudiation of the rule of law in the Philippines v. China case resulted in, among other things, speculation about the country's perceived – or real – interests and activities in Antarctica, where Australia has significant investment, and where respecting the rules of engagement with international law is paramount.

In July 2016, following action brought by the Philippines, an Arbitration tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea held at the [Permanent Court of Arbitration](#) ruled against China's activities in the South China Sea. China did not participate in the Arbitration. China's subsequent [dismissal](#) of the PCA Award made headlines around the world, including in Australia. Chinese repudiation of the rule of law in this case resulted in, among other things, speculation about the country's perceived – or real – interests and activities in Antarctica, where Australia has significant investment, and where respecting the rules of engagement with international law is paramount.

World media headlines highlight China's activities in Antarctica, for example: "[China to Expand Presence in Antarctica with New Research Bases](#)", "[China's interest in mining Antarctica revealed](#)", "[China to Establish Antarctic Air Squadron in 2016](#)" and "[Considering China's strategic interests in Antarctica](#)" – the latter concluding with the warning, "Australia has benefited from Antarctic research cooperation with its Chinese counterparts, but we must prepare for a possible future where national interest trumps friendly cooperation." This theme is expressed more broadly, with the headline "[Nationalism threatens Antarctica's future as a peaceful hub for science](#)" indicating widespread concern about the motives of a number of Antarctic states, including China. The [Antarctic Treaty](#) – to which China is a signatory – says, in its Preamble, that

Antarctica “shall not become the scene or object of international discord” – and that is exactly what these kinds of headlines and the speculative commentary around them, incites. One aspect that is often misrepresented in Antarctic commentary is the power of any one country to act unilaterally to influence what happens there. In order to understand China’s obligations to the legal regime in Antarctica, here is what China has actually committed itself to.

First, the [seven existing claims to territory](#) and the two rights to future claims (the United States and Russian Federation) are protected by the Antarctic Treaty. No new claims are permitted during the life of the Treaty (which, incidentally, has no expiry date), even though Antarctica has the largest piece of unclaimed territory on earth. A Consultative Party (China, for example) can build a scientific base anywhere they want – even in another state’s claimed territory – but that action does not have the status of a legal *claim*.

Second, China participates in decision-making by consensus. Because the Antarctic Treaty permits any state to become a signatory, either directly or by invitation, no country is disadvantaged or excluded from participation in Antarctic discussions. China became a signatory in 1983 and in just over two years it gained Consultative Party status, earned through “conducting substantial scientific research activity” such as building a base, sponsoring research expeditions, or collaborating in joint scientific research programs. Consultative Party status allows China to participate in decision-making in [Antarctic Treaty Consultative Meetings](#) alongside – and equally – with the other [28 Consultative Parties](#). Equality is achieved through consensus – meaning both that no decision is taken if there is a formal objection, and that decisions do not prejudice any one party. When a formal objection is received, negotiations continue. Although this might be slow, it produces more harmonious relationships among the diverse group of Consultative Parties, and perhaps explains why the Treaty has survived for 58 years without major incident and with its original wording intact.

Third, Antarctica is a continent where the focus is on science, and China's scientific operations are extensive, and growing. It has four [scientific research bases](#): Great Wall on King George Island in the Antarctic Peninsula, and three in the Australian Antarctic Territory (AAT): Zhongshan, Kunlun at Dome A more than 4,000 m above sea level in the interior, and the newest, Taishan, inland from Zhongshan on the way to Dome A. (Incidentally, Australia has been [criticized](#) for not securing its sovereignty over the AAT by, among other things, failing to conduct sufficient 'deep field' scientific research in the hinterland of its claimed territory, where Kunlun and Taishan bases are.) The [Chinese Arctic and Antarctic Administration](#) also has an ice-breaker, [Xuelong](#), which supports both its marine science programs and its base re-supply. So far there have been 32 Chinese research expeditions to Antarctica and known scientific interests include marine science, climate change, sea ice forecasting, geology, and geomagnetism.

Fourth, the Antarctic Treaty prohibits military activity, nuclear weapons testing and the dumping of nuclear waste, although military assets may be used to support science. There is an inspection regime designed originally to ensure these bans were respected. The Parties pride themselves on voluntary compliance with the rules, and transparency through the inspection system in which each has a right to inspect the facilities of others, but with a corresponding duty to be inspected itself. There is a dispute resolution procedure, but it has never been used in the Treaty's history.

The Antarctic Treaty has some important restrictions on Chinese behavior in Antarctica but also reflects some important freedoms – including the freedom to conduct scientific research anywhere in Antarctica, but with a corresponding obligation to share the results “[to the greatest extent feasible and practicable] scientific observations and results from Antarctica shall be exchanged and made freely available”.

China is also a signatory to other legal instruments with an Antarctic remit: the [Protocol on Environmental Protection to the Antarctic Treaty](#) (Madrid Protocol) that sets the benchmark for

good environmental behavior; and the [Convention on the Conservation of Antarctic Marine Living Resources](#) (CAMLRL Convention) – the Southern Ocean fishing and conservation convention in whose area China has a small fishing fleet.

First, China's acceptance of the Madrid Protocol, through which wildlife and the environment now attract comprehensive protection, means that it must conduct an environmental evaluation of all its activities (including tourism) prior to them being carried out in the region. While no Party or forum can veto a proposed activity, there are guidelines, inspections, and there will be expert discussion in the [Committee for Environmental Protection](#) to help China standardize its approach to the environment.

Second, China is not the first, and it will not be the last, country to show interest in mining in Antarctica. In fact, the Antarctic Treaty Consultative Parties drafted a whole [convention](#) on this topic in the 1980s, which they subsequently rejected in favour of a [permanent mining ban](#). The Madrid Protocol prohibits “mineral resource activities” other than scientific research, meaning a Party can undertake science but can't mine in Antarctica. It would be possible to overturn this ban tomorrow if all the Consultative Parties (including China) agreed and there was a legal regime to regulate mining in place. There is also an opportunity to review the mining ban *if* the Madrid Protocol itself is formally reviewed in 2048 (50 years after it entered into force). A review conference is by no means certain and therefore a review of the mining ban in 2048 is not guaranteed. It is best to classify the ban as indefinite.

Third, under the Madrid Protocol areas can be set aside, and species nominated, for special protection. China is currently pitching for specially managed area status to be applied to [Dome A Kunlun station](#) – a move that some see as not only [staking a claim](#) to Antarctic territory, but also attempting to put up a fence around it to keep others out. This is simply not possible, legally.

Fourth, China is a signatory to the 1980 CAMLR Convention and because it conducts scientific

research and [fishes for krill](#) in the Southern Ocean, China has Commission Membership (decision-making) status. This means that China must license its own vessels to fish in the Southern Ocean and take responsibility for compliance. A vessel must, *inter alia*, observe the annual catch limits and other regulations for krill, to which China agrees as part of the consensus. To help ensure compliance there is a mandatory observation and inspection system on all vessels (voluntary on krill vessels) and a mandatory vessel monitoring system. This means fishing vessels must report their coordinates to China, which relays this information on to CCAMLR.

Finally, China exercised its veto over marine protected areas (MPAs) in CCAMLR for a number of years, but withdrawing its objection enabled the adoption of the [Ross Sea region Marine Protected Area](#) – the world’s largest high seas MPA – in 2016. This move was warmly welcomed by the Members and will give added impetus to China’s credibility in CCAMLR. In addition, the [China National Fisheries Corporation](#) is a member of the non-governmental organisation – [the Association of Responsible Krill harvesting companies](#) – which is one of few NGOs that has been granted observer status in CCAMLR meetings.

To conclude, China is a party to the Antarctic Treaty and its Madrid Protocol, and the CAMLR Convention. Under the rules of international law, states sign on to treaties in good faith, accepting the obligation to be bound willingly. China has publicly stated that it is committed to the Antarctic Treaty System: President Xi Jinping signed a bilateral [Memorandum of Understanding](#) with Australia on Antarctic cooperation in November 2014, and, among other things, that MoU contains a statement on their continued commitment to the Antarctic Treaty system. A statement such as this might well be viewed by a court as a declaration made through a [unilateral act](#) which then had the effect of creating a legal obligation – that is, one committing China to abide by the rules of the Antarctic Treaty system. China has a high profile and growing presence in Antarctica and is one of only 29 Consultative Parties. In fact, Beijing will host the 2017 Antarctic Treaty Consultative Meeting at the end of May 2017. Therefore – no matter how their motivations or

intentions are represented in the media or speculated about by Antarctic commentators – China is legally bound by the rules of international law, and norms of good behaviour that are embedded in the Antarctic Treaty system.

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