The Antarctic Treaty,\(^1\) negotiated in 1959, is the foundation of the multifaceted governance system known as the Antarctic Treaty System (ATS). The Antarctic Treaty itself applies to the Antarctic continent, ice-shelves, islands, and ocean area south of 60° S latitude.\(^2\) The CAMLR Convention,\(^3\) another instrument within the ATS, applies to the area south of 60° S latitude and to the Antarctic marine living resources of the area between that latitude and the Antarctic Convergence to the north and that forms part of the Antarctic marine ecosystem. Hence the ATS encompasses the Antarctic continent, surrounding islands and Southern Ocean south of the Antarctic convergence zone, which varies between 45° S and 60° S.\(^4\)

Oceans are, however, subject to another, global, regime, centered around the LOS Convention.\(^5\) The Antarctic Treaty was negotiated at the historical juncture between the law of the sea being predominantly located in customary international law and its period of codification and progressive development through treaty law. Hence the Antarctic and law of the sea regimes have evolved in tandem. Given that the regime for the oceans is of a global nature and has three times the number of participants, the ATS has of necessity accommodated developments in the law of the sea at the global level where they have threatened to impinge on the regional governance system; this has been particularly the case

\(^1\) Adopted on 1 December 1959, 402 UNTS 71.
\(^2\) Antarctic Treaty, art. VI.
since the negotiation, adoption and entry into force of the LOS Convention, one of the most comprehensive of international law instruments. This chapter considers how the ATS has met the challenges posed by developments in the law of the sea, and with what implications for the Antarctic regime. It begins, however, by reviewing the normative and political framework of the ATS.

**The Antarctic Treaty System**

The ATS is defined as consisting of “the Antarctic Treaty, the measures in effect under that Treaty, its associated separate international instruments in force and the measures in effect under those instruments”. The ATS is widely regarded as having been a success in facilitating harmonious international cooperation in Antarctica and this can be attributed to a number of factors including the capacity of the governance system to evolve to address new issues as they arise. Importantly, the regime has been able to do so while retaining a high degree of coherence and consistency in its normative structure. Most fundamental to its success, however, has been its capacity to mediate three sets of political relationships. Let us begin by considering each in turn.

**Members of the ATS versus Those External to the System**

Members of the ATS have taken it upon themselves to make arrangements for the governance of Antarctica. They have not generally encountered strong opposition from those external to the System. At certain points in the history of the ATS, however, questions have come to the fore as to the status of the Antarctic Treaty in respect of non-Parties and in respect of the status of the Antarctic Treaty in relation to treaties of a global nature that address subjects of relevance to Antarctica. The nature of the legal standing of the ATS has been the subject of considerable interest over the years. In the mid-1980s Bruno Simma referred to the ATS as being an “objective regime”. Even if the whole regime is not an objective regime it is possible that certain provisions, such as those on non-militarization and non-nuclearization, have acquired that status, a position that would be strengthened by the lack of third party challenge to those provisions. Roland Rich, of the Australian Department of Foreign Affairs, wrote at the time of the CRAMRA negotiations that the lack of protests from those outside the regime had indicated their

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