

The Antarctic Treaty in the Changing World

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Working paper submitted by the Russian Federation

December 1st, 2019, marks the 60th anniversary of the Antarctic Treaty. The International Antarctic Community established in 1959 has always been finding adequate responses to new challenges emerging on the global stage.

It is natural that the global community has undergone significant changes for the past sixty years. Nowadays, there exists an opinion that the Antarctic Treaty of 1959 has already fulfilled its historical role and it needs to be replaced with another international legal act. However, the functioning of the Antarctic Treaty System (ATS) that is represented not only by the Antarctic Treaty but also by other international legal acts on this region is an effective working mechanism that responds to the time demands and has the necessary margin of safety for the future.

At the same time, maintaining the ATS in the "working" condition has been requiring significant efforts from all its members and participants. It is related, inter alia, to the fact that new developments in the global policy affect the Antarctic region. For example, at this stage, the environmental protection issues and the impact of the global climate change on the Antarctic region have become a priority in the ATS activities. One of the representations of this trend is the fact that starting from 1992, the majority of working and information documents presented at the ATCM are dedicated to this topic.

At the same time, the following factors are likely to shape the future of Antarctica:

increase of the number of Consultative Parties and, consequently, complication of the decision-making process within the ATS;

external pressure on the established mode of Antarctic management;

advancing politicisation of research and technology, and environmental activities in Antarctica;

growing interest towards a more intensive use of the Antarctic resources, including the issue of the "postponed" utilization of mineral resources of the region;

Continuity and efficiency issues in the process of approval of Measures by ATCM.

The objective discrepancies in political and economic orientations of the twenty-nine Consultative Parties to the Antarctic Treaty underlie the difference between their approaches to regulation of their national activities in Antarctica, as well as the disparities in interpretation of the ATS decisions.

In this context, the scale of the practical activities of the Consultative Parties in the region assumes great importance. The research and expeditionary capacities of these states are very different and diverse, which is largely underpinned by their political and economic potential. As of 2018, twenty-nine Consultative Parties and one Non-Consultative Party to the Antarctic Treaty had thirty-four all-year and thirty-three seasonal stations. National Antarctic programmes have different capabilities in terms of logistic and transportation support of their expeditions and conducting technologically challenging research, which is often underpinned by the existing disparities between the levels of economic development of the Consultative Parties. For instance, according to the UN data as of 2017, individual volumes of gross domestic product of the Consultative Parties lie in the range from the first to the 77th place. Such "range of capacities" is

preserved notwithstanding the fact that the member states of the Antarctic Treaty broadly use international cooperation in scientific research and logistics.

The Antarctic Treaty has pioneered the path of finding solutions to the past challenges of management in the region.

It is obvious that even now when the issues of the climate change and environmental protection are becoming a priority in the regulation of activities in Antarctica, the Consultative Parties need to develop new approaches to address these challenges. For example, the problems of the global climate change went far beyond merely scientific interest long ago. They have become of significant interest for many politicians, businessmen and mass media. Participation in various international environmental projects has become a necessary aspect of activities of the Consultative Parties.

Growing controversies and tension in the modern global policy leads, inter alia, to doubting the foundation of the political and legal status of Antarctica, for instance, of its cornerstone, Article IV of the Treaty that regulates territorial claims in the region.

Another challenge lies in the tendency to blur the competence of different ATS agencies. It is essential that political issues regarding Antarctica be considered exclusively within the ATCM. Other ATS institutions shall discuss research and technical matters of the activities in the region, its environmental protection, and legitimate and sustainable use of its resources as stipulated in the key documents. Excessive politicisation of the ATS agencies has an adverse effect on the strategic status of the ATCM in the current Antarctic Treaty System. Clear coordination of activities between different ATS bodies and avoidance of duplication, not to mention usurpation, of their mandates shall guarantee its further effective functioning.

In the recent years, the present-day non-governmental and tourist activities in Antarctica have been traditionally considered only from the perspective of their increased environmental impact on the region. The issues of tourist passenger vessels operating under "convenient" flags with companies registered in countries not participating in the Antarctic Treaty are disregarded. This problem includes the use of Antarctic Gateway countries with no national legislation on regulation of activities in the region, and also holding various sports, cultural and outreach events in Antarctica, which are unrelated to the key objectives of the Antarctic Treaty.

The matters of bioprospecting remain important. Uncontrolled biologic experiments and research in Antarctica can lead to irreparable consequences and new physical threats to human life on the planet.

Article 7 of the Madrid Protocol stipulates the prohibition of conducting any activity related to mineral resources in Antarctica, except for research. At the same time, there is no denying that given dramatic fluctuations of prices for non-renewable resources at global markets there persists interest to Antarctica that can be witnessed by periodic waves of publications on this topic, both in mass media and in the scientific community. It is evident that this aspect needs to be controlled by the ATS.

For the sixty years of existence of the Antarctic Treaty since 1959, the number of its participants has grown from twelve "founders" to fifty-three, and the number of Consultative Parties has grown from twelve to twenty-nine. Article XIII of the Antarctic Treaty stipulates its openness for accepting any UN member-state. This condition set the Antarctic Treaty apart from other international regional legal acts, creates a foundation for its sustainable development, and affords

no ground for claims about the so-called "closed" and "privileged" nature of the Treaty.

However, the positive effect of expanding the membership of this regional "club" has another side: the process of approval of already approved decisions by the states becomes significantly more complicated. As is commonly known, the Recommendations and Measures adopted at the ATCM come into effect after their ratification by all Consultative Parties. Consequently, important initiatives approved at the ATCM by consensus of all delegations do not come into effect for a long time due to complicated national procedures. As a result, many Measures of a great political, organizational and environmental significance adopted at the ATCM do not come into effect for many years.

Another important issue is the disparities in the national procedures regulating permitted activities in Antarctica. Article 1 of Annex 1 to the Madrid Protocol stipulates that any planned activity in Antarctica shall have a prepared Environmental Impact Assessment (EIA), which shall be considered in compliance with the applicable national procedures. As a result, a number of Consultative Parties have a strict approval procedure for such activities. Another group of states have a notification procedure requiring only an EIA submission. Besides, unfortunately, a number of Consultative Parties have no national procedure so far. Effectively, this situation results in the fact that one of the most important legal instruments of effective and responsible regulation of activities in Antarctica, namely Annex 6 to the Madrid Protocol has not yet come into effect.

Advancement in the scale, forms and methods of activities in Antarctica is an objective process. The Antarctic community will definitely have new challenges, so the established international system of Antarctic management needs not only to look for new responses to such challenges but to timely prevent them.

All member states share the common goals of improving and maintaining the international Antarctic management established by the Treaty of 1959, and this is one of the key elements that contribute to the success of this document and the whole ATS, whose political and organization role is maintained and reinforced regardless emerging challenges.

Recommendations

To discuss current challenges to the ATS functioning, including its interaction with other international legal frameworks, including global ones.

To assess the impact of the current global processes on the activities in Antarctica, and the corresponding measures required from the ATCM.

To include the corresponding clauses in the ATCM Multi-Year Work Plan upon agreement of the Consultative Parties.

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