

# Міжнародне співробітництво: суспільно-географічні та політико-правові аспекти освоєння Антарктики

## International Co-Operation: Socio-Economic, Political and Legal Issues of Antarctic Exploration

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### SIXTY YEARS OF THE ANTARCTIC TREATY: LANDMARK ANNIVERSARY ON THE HALFWAY FROM 1991 TO 2048 MILESTONES

**ABSTRACT. Objective.** This note aimed to summarize the main achievements and to determine emerging political-legal challenges of Antarctic governance in the light of the 60th anniversary of the Antarctic Treaty. **Methods.** A Comparative Analysis of academic papers on this matter, and interpretation of the legal provisions of declarations and statements adopted during the past decade by the Antarctic Treaty Parties' official delegations and authorized representatives. **Results.** The Antarctic Treaty System (ATS) is widely considered as one of the most successful and robust international legal regimes. It is the first well-developed institution to govern all kinds of human activities on the continent-wide large scale in the area covering nearly 10% of Earth's surface. Peaceful use, international scientific cooperation, and the protection of the Antarctic environment, including the rational use of marine leaving resource in the Southern Ocean, comprise the three basic elements that are and continue to be cornerstones of the ATS. While the Antarctic Treaty Parties have been mostly focusing on two arising issues (climate change and tourism), the ATS is now facing a number of other political and legal challenges, such as heterogeneity amongst member-states, pressure to internationalize Antarctic governance, unresolved issues of jurisdiction and territorial sovereignty claims, including the delimitation of continental shelf in the Southern Ocean, as well as the growth and diversification of Antarctic resources commercial activities – illegal, unreported and unregulated fishing and bioprospecting etc. **Conclusions.** The current 60th anniversary of the ATS is laid at the most stable stage of its development in the first part of twenty-first century, just in the middle of another almost 60-year period between 1991 and 2048 milestones that referring to the banning of mining in Antarctica and possible mechanism of its review respectively. Therefore, now it is the appropriate time to reinforce international efforts through relevant and proactive interaction between government and legislative bodies, to address the most important issues putting the Antarctic Treaty System under pressure and giving rise to new challenges. It is also the appropriate time to update national Antarctic strategic interests and priorities, in particular to define clear vision for Ukraine's political role in Antarctica.

**Keywords:** Antarctic Treaty System, regional governance, international regimes, Antarctic Treaty Consultative Meetings, political-legal challenges, sovereignty, resources.

#### THE IMPORTANCE OF THE 1959 ANTARCTIC TREATY

In 2019, the world is celebrating 60 years of the Antarctic Treaty, which was signed by 12 countries in Washington, DC on December 1, 1959, and entered into force in 1961. It was a real success of international diplomacy as international conflicts in relation to the contested territorial claims were turned into

stability and effective cooperation in the interest of all mankind. Growing from seven claimant and five non-claimant signatories, the Antarctic Treaty now engages 54 nations (including 29 Consultative Parties that participate in the decision-making), which together represent nearly 90% of the global human population.

In according with the provisions of the Antarctic Treaty dealing with amendments, a Review Conference could be held after 30 years from the entry into force of the treaty. Despite many predictions to the contrary, a Review Conference of the Antarctic Trea-

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ty was not called for during 1991, and no request has been made subsequently right up to 2019, i.e. at the end of the second 30-year period from the entry into force of the Treaty. This has been possible mainly due to the fact that, as the U.S. State Secretary Hillary Clinton said, the genius of the Antarctic Treaty lies in its relevance today (Dodds 2012:70).

For over the past six decades, the Antarctic Treaty and its related agreements, known as the Antarctic Treaty System (ATS), has provided a firm foundation for international governance all kinds of currently existing human activities on the whole continent and the surrounding Southern Ocean in the area south of latitude 60°S, covering nearly 10% of Earth's surface.

The effect of these additional instruments of ATS has been to create a regime for the regulation and protection of Antarctic seals, a regime for the regulation of Antarctic marine living resources (which, as Rothwell (2019) noted, over time has been expanded from the regulation of fishing activities to now encompass marine protected areas), and a regime for the comprehensive protection of the Antarctic environment.

In addition, in 1988 the Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA) was also adopted, however this instrument was effectively abandoned when key Antarctic Treaty Parties, namely Australia and France, decided to favour the Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol) to ban mining in Antarctica and designating it as a natural reserve devoted to peace and science (Rothwell, 2019).

## THE LEGACY OF THE ANTARCTIC TREATY SYSTEM

In general, the main three achievements constituent the enduring legacy of the Antarctic legal regime could be identified. Firstly, usage of Antarctica exclusively for peaceful purposes during the Cold War and thereafter, and successful securing its non-militarization and neutralization status as the first nuclear-free zone in the world.

Secondly, ensuring unprecedented international scientific collaboration, which remains the main focus of activity on such a remote continent, as well as

recognizing that results from scientific research in, from and about Antarctica over the past sixty years have expanded the boundaries of human knowledge of natural processes taking place not only in Antarctica but also globally, including knowledge of the impacts of global environmental change and the contribution of human activity to this change.

Thirdly, Antarctica is the first continent to be completely subject to a specific international legal regime, ensuring well-developed environmental management instruments based on eco-system approach applied at continent-wide large scale for continuing and outstanding regulation of precautionary fisheries and environmentally responsible tourism, as the result of designation in 2016 of world's largest Marine Protected area in the Ross Sea.

The highest governance body of the Antarctic legal regime, namely the Antarctic Treaty Consultative Meetings (ATCM), recognizing the historic achievements of the Treaty in promoting peace and international cooperation in the Antarctic region over the past more than half century, have adopted a number memorial declarations, as follow:

- Washington Ministerial Declaration on the Fiftieth Anniversary of the Antarctic Treaty (adopted by the ATCM XXXII, Washington, April 6, 2009);
- Declaration on Antarctic Cooperation on the Occasion of the 50th Anniversary of the Entry into Force of the Antarctic Treaty (adopted by the ATCM XXXIV, Buenos Aires, June 23, 2011);
- Santiago Declaration on the Twenty Fifth Anniversary of the signing of the Protocol on Environmental Protection to the Antarctic Treaty (adopted by the ATCM XXXIX, Santiago, May 30, 2016);
- Prague Declaration on the Occasion of the Sixtieth Anniversary of the Antarctic Treaty (adopted by the ATCM XLII, Prague, July 8, 2019).

In all above-mentioned declarations the Antarctic Treaty Parties reaffirm their continued strong commitment to the objectives and purposes of the Antarctic Treaty and all the other elements of the Antarctic Treaty system that have evolved since the Treaty's entry into force.

In addition, the Antarctic Treaty Parties have been agreed to identify and address emerging environmen-

tal challenges in relation to global climate change. 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 Antarctic Treaty Parties' activities. This is illustrated by the fact that the majority of working and information documents presented at the ATCM are dedicated to this issue since 1992.

Another recognized emerging challenge is tourism. To this end, the Antarctic Treaty Parties commit to ensure that current and future tourism and non-governmental activities are effectively managed, including addressing impacts arising from potential growth and diversification of such activities, bearing in mind the provisions contained in the Protocol on Environmental Protection to the Antarctic Treaty.

### **THE EMERGING POLITICAL-LEGAL CHALLENGES**

However, despite the ATS proved to be resilient, it has not seen any significant development since the 1990s, when the Madrid Protocol was adopted. While the Antarctic Treaty Parties have been mostly focusing on two issues (climate change and tourism), the ATS is now facing a number of other environmental challenges, that affect the protection of the Antarctic environment and its dependent and associated ecosystems, particularly in relation to growing and diverging human activities in the Antarctic region. That is why, critics are increasingly questioning its performance and ability to adequately address contemporary challenges. Ferrada (2018) paradoxically notes, that after the enthusiastic celebration of the fiftieth anniversary of the Antarctic Treaty, there was much talk of the past and little of the future. He concludes, that there seems to be genuine concern about current problems but little desire for new obligations in the longer term.

Ferrada (2018) further notes the transition to new Antarctic political-legal scenarios will be conditioned by the evolution of the following five factors: heterogeneity amongst states that participate in this international regimen; pressure to internationalize Antarctic governance; the unresolved issues of jurisdiction, ter-

ritorial sovereignty claims, and regime legitimacy and function as a whole; the growing politicization of research and environmental activities in Antarctica by the claimant states; and finally, the probable necessity to exploit Antarctic resources more intensively. Heterogeneity of the ATS means the increase of the number of Consultative Parties and, consequently, complication of the decision-making process within the ATS, including the process of approval of Measures by ATCM. In turn, the internationalization of the Antarctic governance means the unresolved issues of the interaction between the Antarctic Treaty System and the other relevant conventions applicable to the Antarctic area, such as the 1982 United Nations Convention on the Law of the Sea and established in 1994 the International Seabed Authority, as well as the 1992 Convention on Biological Diversity (Vigni, 2000).

Other authors (Dodds, 2010, 2012, 2019; Hemmings, 2017; Herber 2007; Joyner, 2011) have considered different factors for future change in the Antarctic, focusing on several key issues: the possibility of conflict between claimant and non-claimant states over the delimitation of continental shelf in the South Ocean and possible access to offshore hydrocarbon resources; the growth and diversification of Antarctic resources commercial activities – illegal, unreported and unregulated fishing and bio-prospecting, which poses a real threat to the Antarctic ecosystem, and therefore to the Antarctic Treaty System. Meanwhile, Liggett et al. (2017) identify global environmental and socio-economic trends, including changes in Antarctic research, that could the potential shifts in the ATS.

Notably, that current 60th anniversary of the signing the Antarctic Treaty is laid just in the middle of another almost 60-year period between 1991 and 2048 milestones that referring to the banning of mining in Antarctica and possible mechanism of its review respectively. Once the Madrid Protocol was signed in 1991, Antarctica as a potential region of mining was turned into natural reserve devoted to piece and science (Fedchuk, 2012). In turn, the year 2048 marks the 50-year period after which a conference could be called to review the Madrid Protocol.

One of the aspects open to possible discussion is the exploitation of minerals and hydrocarbons, a topic that will mobilise economic, political, and environmental interests both for and against (Ferrada, 2018). Theretofore, the ATS currently is at the most stable stage of its development in the first part of twenty-first century, and this is the appropriate time to reinforce international efforts, through relevant forums, and to address arising environmental, political, legal, and operational issues that will adversely impact on both the Antarctic environment and its legal regime.

One of such relevant forums is the ATCM itself, when the national delegations consist mostly of government representatives. In accordance with the Article IX of the Antarctic Treaty, the ATCM is called on regular basis in the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering and recommending to governments measures in furtherance of the principles and objectives of the Antarctic Treaty, including, where necessary, by further enhancing the Treaty system's regulatory framework.

Another relevant forum of national legislative bodies is currently only at the initial stage. It is remarkable, that a group of 19 parliamentary delegates, representing 13 countries from Antarctic Treaty Parties, including Ukraine, gathered at the inaugural Antarctic Parliamentarians Assembly in London on 2-3 December. The Assembly aimed to highlight the importance of Antarctica in the understanding of our planet, and provided an opportunity for parliamentarians, rather than governments, to be able to press their legislatures to support the ATS.

In adopted Conference Statement parliamentary delegates urge the Antarctic Treaty Parties and Members of the Commission for the Conservation of Antarctic Marine Living Resources actively to support and, as appropriate, prioritize their efforts to:

- *protect and conserve the Antarctic environment* (including, *inter alia*, by addressing the effects of climate change on Antarctic marine biodiversity and marine conservation, as well as ecosystem-based fisheries management; and promoting effective establishment, management and monitoring of a systematic network

of Antarctic specially protected areas, including a representative system of Marine Protected Areas);

- *promote and support international scientific collaboration* (in particular, to encourage further coordinated efforts in expanding and maintaining observation efforts in Antarctica and the Southern Ocean, recognizing the role that integrated and sustained observations play in answering key scientific questions, from predicting sea level rise to understanding ecosystem response to environmental change; and facilitate the efficient collection and sharing of scientific information and encourage work to increase data comparability);

- *ensure effective management of activities in Antarctica* by ensuring sustainable fishing practices in order to minimize impacts on non-target species and, in particular, to avoid sea-bird and marine mammal by-catch; and to combat illegal, unregulated and unreported fishing activities; and noting the anticipated continued growth in tourism and any adverse environmental impact that some activities may have, to ensure that tourism is conducted strictly in a safe, environmentally responsible manner, including through the implementation of all tourism related Antarctic Treaty Consultative Meeting Measures.

Parliamentarians also have agreed to encourage their parliaments to adopt, where appropriate, additional national legislation contributing to the full and effective implementation of the provisions of the Antarctic Treaty System.

The further proactive interaction between government and legislative bodies could be very useful to ensure that strategic decisions are taken at the appropriate time, so that the objectives of the Antarctic Treaty System can be achieved, and the Antarctic Treaty System itself is a dynamic system flexibly and timely responding to new regional issues.

## UKRAINIAN'S ROLE WITHIN THE ANTARCTIC TREATY SYSTEM

Recently, in 2017 Ukraine has celebrated 25 years of accession to the Antarctic Treaty which entered into force for Ukraine on 28 October 1992. After than in 2001 Ukraine acceded to the Protocol on Environ-

mental Protection to the Antarctic Treaty, including its five Annexes. All these years, Ukraine has remained committed to the principles of the Antarctic Treaty and has consistently fulfilled international obligations as a Consultative Party. Then hosting the XXXI ATCM in Kyiv, in June 2008, was a landmark in Ukraine's Antarctic engagement.

In accordance with the Decision of the Government of Ukraine No 441 "On Implementation of the Measures approved by the Antarctic Treaty Consultative Meeting" as of 21 June 2017 Ukraine has already approved the Measure 1 (2005) Annex VI Liability arising from environmental emergencies to the Protocol on Environmental Protection to the Antarctic Treaty. In 2019 Ukraine expresses its intention to accede to the Convention for the Conservation of Antarctic Seals wishing to become a Party of all basic element of the Antarctic Treaty system, and thereby make its contribution to further strengthen the Antarctic international legal regime.

Ukraine, however, should undertake the following additional measures to enhance its role in Antarctic politics: better inform the decision-makers about Antarctic matters; create the departments or units within competent authorities, specialized in Antarctic politics, and support the training of specialists in this area; ensure effective national engagement in the Antarctic Treaty Consultative Meeting and Commission for the Conservation of Antarctic Marine Living Resources; to develop updated national Antarctic strategic interest and priorities; and finally, define clear vision for Ukraine's political role in Antarctica.

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## 60 РОКІВ ДОГОВОРУ ПРО АНТАРКТИКУ: ЗНАКОВИЙ ЮВІЛЕЙ, РІВНОВІДДАЛЕНИЙ ВІД ВИЗНАЧАЛЬНИХ 1991 ТА 2048 РОКІВ

**РЕФЕРАТ. Мета.** Метою цього повідомлення є узагальнення основних досягнень та визначення політико-правових викликів, що постають перед режимом регіонального управління Антарктикою у світлі 60-ї річниці підписання Договору про Антарктику. **Методи.** Порівняльний аналіз наукових праць з цього питання, а також тлумачення правових норм пам'ятних декларацій, ухвалених протягом останнього десятиліття офіційними делегаціями Сторін Договору про Антарктику та уповноваженими представниками. **Результати.** Система Договору про Антарктику вважається одним з найуспішніших і надійних міжнародно-правових режимів, першою добре розвинутою інституцією, яка забезпечила управління всіма видами людської діяльності у масштабі цілого континенту, що охоплює майже 10% поверхні Землі. Мирне використання, міжнародне наукове співробітництво та охорона навколишнього середовища Антарктики, включаючи раціональне використання морських ресурсів Південного океану, складають три основні елементи, які продовжують бути наріжними каменями Системи Договору про Антарктику (СДА). Незважаючи на те, що Сторони Договору про Антарктику головним чином зосереджуються на двох питаннях (зміна клімату та туризм), СДА наразі стикається з низкою інших політичних та правових викликів, таких як гетерогенність країн-членів СДА, інтернаціоналізація управління Антарктикою, невирішені питання юрисдикції та висунутих в односторонньому порядку територіальних претензій на суверенітет Антарктики, включаючи питання розмежування континентального шельфу у Південному океані, а також зростання та диверсифікація комерційних видів діяльності, пов'язаних з використанням антарктичних ресурсів – незаконний, незареєстрований та нерегульований морський промисел та біологічна розвідка тощо. **Висновки.** Нинішній 60-річний ювілей СДА припадає на найбільш стабільний період свого розвитку першої половини XXI століття, і є рівновіддаленим від визначальних 1991 та 2048 років, що стосуються заборони видобутку мінеральних ресурсів в Антарктиці та можливого механізму її перегляду відповідно. Тому зараз слушний час для посилення міжнародних зусиль, зокрема взаємодії між урядовими та законодавчими органами Сторін Договору про Антарктику, задля завчасного вирішення найважливішої проблеми, що чинять тиск на СДА та породжують нові виклики. Також зараз слушний час для перегляду національних стратегічних інтересів і пріоритетів в Антарктиці та визначення чіткого бачення політичної ролі України у сучасному міжнародно-правовому режимі Антарктики.

**Ключові слова:** Система Договору про Антарктику, регіональне управління, міжнародні режими, Консультативна нарада Сторін Договору про Антарктику, політично-юридичні питання, суверенність, ресурси