

Antarctic Governance: From ATCM to A Permanent Antarctic Organization?

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Abstract

The Antarctic Treaty System (ATS) with its core being the 1959 Antarctic Treaty has played an important role in the international governance of Antarctica and safeguarding the Antarctic peace and order. It has been deemed as the model of international cooperation and coordination. The Antarctic regime has undergone the process from a “decentralized approach” to the partial institutionalization and even to the overall institutionalization during the past 53 years. Under the current Antarctic Regime, The Antarctic Treaty Consultative Parties (ATCPs) and the Antarctic Treaty Consultative Meeting (ATCM) as the decision-making power, the CCAMLR and CEP as the specialist subsidiary bodies implementing the 1980 CAMLR and 1991 Madrid Protocol under the ATS, as well as the Secretariat of the Antarctic Treaty as the permanent administrative organ have constituted the basic elements of an intergovernmental organization. The emergence of a permanent international organization—Antarctic Organization will not only clarify or identify the international legal status of the Antarctic Regime, benefit the integration of the current inner institutions, including the CCAMLR, CEP and the Secretariat, but also promote the interaction between the Antarctic regime and other international organizations, such as the United Nations, SCAR or other NGOs, and finally further process the transparency, legitimacy and effectiveness of the Antarctic governance.

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General Introduction

- The Antarctica is under the governance of the Antarctic Treaty System (ATS) which set Peace, Science and Environmental Protection as the principal values
- Evolved over 50 years, the ATS has proved successful in maintaining the peace and security of the Continent, the Model of International cooperation
- However the Antarctic governance still faces great challenges with climate and geo-politics changes as well as the global energy deficiency

General Introduction

- The ATS, as the legal instruments for Antarctic governance, has evolved over 50 years since the effectiveness of 1959 Antarctic Treaty.
- The ATS includes not only the basic treaties which set the rules of legal status of Antarctica, the science research, environmental protection, and Antarctic tourism, but also a great deal of Measures, Recommendations, Decisions and Resolutions adopted at successive Consulting Meetings (ATCM) in furtherance of the principles and objectives of the Treaty.

Governance principles and legal regime on Antarctica

- Freezing territorial claims (Art.4)
 - Principle of peaceful use and demilitarization (Art.1)
 - Free science expedition and research (Art.2)
 - Decision making mechanism (Art.9)
 - Environmental protection. (Madrid Protocol of 1991)
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The Institutional Development of ATS

- Decentralized Approach under the 1959 Antarctic Treaty: ATCPs & ATCM
 - Partial institutionalization within ATS: CCAMLR & CEP
 - The institutional development of ATS: Establishment of Secretariat of Antarctic Treaty
 - Towards a Permanent Antarctic Organization?
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De-Centralized Approach under the 1959 Antarctic Treaty

- ATCM is the **primary forum** for the representatives of parties to the Antarctic Treaty to exchange information and formulate measures, decisions and resolutions to further the principles and objectives of the treaty. The outcomes of treaty meetings are adopted by consensus of the consultative parties.
 - From 1961 to 1994 the ATCM generally met once every two years, but since 1994 the meetings have occurred annually. The ATCM is hosted by the Consultative Parties according to the alphabetical order of their English names.
 - The meeting consists of representatives of: ATCPs; NCPs; Observers including SCAR, CCAMLR, and COMNAP as well as invited experts such as ASOC, IAATO, IOC, IPCC, IHO, IMO, UNEP, WMO, WTO. Etc.
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De-Centralized Approach under the 1959 Antarctic Treaty

- Measures, Decisions and Resolutions, which are adopted at the ATCM by consensus, give effect to the principles of the Antarctic Treaty and the Environment Protocol and provide regulations and guidelines for the management of the Antarctic Treaty area and the work of the ATCM. Decisions, which address internal organizational matters of the ATCM, and Resolutions, which are hortatory texts, are not legally binding on contracting parties. In contrast, Measures are legally binding on the consultative parties once they have been approved by all consultative parties.
- Only the consultative parties take part in decision-making. Other participants in the meeting, however, may contribute to the discussions.

De-Centralized Approach under the 1959 Antarctic Treaty

- The ATCM is chaired by a representative of the host country. Between the opening and closing plenary sessions, most of the work of the meeting takes place within the Committee for Environmental Protection (CEP) and various Working Groups. In recent years the following working groups have been established:
 - Working Group on Legal and Institutional Affairs,
 - Working Group on Tourism and Non-Governmental Activities,
 - Working Group on Operational Matters.

The Legitimacy and Effectiveness of ATCPs and ATCM

The main challenges to the legitimacy and effectiveness of ATS and its decision making mechanism

- Decision making Mechanism: the relatively small management group has been criticized in the past as comprising a hegemonic consortium of world power
- "Common Heritage of Mankind": During the 1970s and 1980s, calls for the *internationalization of Antarctica* were articulated within the broader context of developing states' demand for a New International Economic Order
- "Question of Antarctica" : "In 1983, Malaysia placed the subject of Antarctica on the UN General Assembly's agenda (remained on the general Assembly agenda until 1990)

The implication of Legitimacy

Legitimacy of an international regime can be defined as the *persuasive force* of its norms, procedures and role assignments. As such, legitimacy is *manifested* in a degree of positive attitude to the regime: a regime is legitimate when specific rules are accepted by various actors because they recognize the normative basis, the procedure through which they are adopted and implemented, and the positions of actors in terms of rights and obligations

The implication of effectiveness

In international law, 'effectiveness' may refer to the legal status of a rule, meaning that it is binding upon those addressed by it; or, when linked to implementation of rules, to their impact on the relevant factual situation....there is wide agreement that the effectiveness of international regimes must be related to their results or consequences

The legitimacy and effectiveness of ATCPs and ATCM

- The preamble of 1959 Antarctic 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*";
- After the 1990s, with the enactment of 1991 Protocol, The ATCPs became preoccupied with protecting the Antarctic environment, rather than the exploitation of mineral resources;
- The parties to the Antarctic Treaty today represent over 80 percent of the world's population, which further diminishes the "internationalization versus exclusive club" polarization;
- The duties ATS generates are owed *erga omnes* and bind all members of the international community (customary international law)

The legitimacy and effectiveness of ATCPs and ATCM

- Openness of membership of ATS and ATCM: ATS is open for accession by any state, besides 12 original treaty States, any "latecomers" who demonstrated interest in Antarctica "by conducting substantial scientific research activity" could become ATCPs . (Art.9)
- Democracy and transparency of ATCM: Decision making by consensus; interaction between ATCPs and other inter-governmental organizations or NGOs; the establishment of Secretariat;
- UN No. 60/47 Resolution of 2005: "Question of Antarctica" will not be discussed in the UN Assembly agenda; Malaysia's (other developing states) accession to 1959 Antarctic Treaty in 2011.

Partial Institutionalization under ATS-CCAMLR

- Commission of the CCAMLR (Convention on the Conservation of Antarctic Marine Living resources 1980)
- The first int'l body created within the ATS, which shall have legal personality (Art.8) and shall enjoy privileges and immunities in the territory of States Parties on the basis of an agreement between the Commission and State party concerned.
- CCAMLR is an international commission with 25 Members, and a further 10 countries have acceded to the Convention. Based on the best available scientific information, the Commission agrees a set of conservation measures that determine the use of marine living resources in the Antarctic.

Partial Institutionalization under ATS-CCAMLR

The key institutional components of CCAMLR are:

- the CAMLR Convention which entered into force on 7 April 1982
- a decision-making body, the Commission
- a Scientific Committee which advises the Commission using the best available science
- Conservation measures and resolutions
- CCAMLR's Membership and provisions for international cooperation and collaboration
- a Secretariat based in Hobart, Tasmania, that supports the work of the Commission.

Partial Institutionalization under ATS-CRAMRA

CRAMRA (The Convention on the Regulation of Antarctic Mineral Resource Activities) 1988 (has not come into force) established the most sophisticated institutions within ATS

- a Commission (Art.18)
 - two Committees (A Scientific, Technical, and Advisory Committee under Art.23 and a regulatory Committee under Art.29)
 - a Secretariat (Art.33)
 - a Arbitral Tribunal (Art. 1 of the Annex to CRAMRA)
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Partial Institutionalization under ATS-CEP

- CEP (The Committee for Environmental Protection)
 - CEP was established by Article 11 of the Environment Protocol. Article 12 provides that the Committee's functions are *"to provide advice and formulate recommendations to the Parties in connection with the implementation of this Protocol, including the operation of its Annexes, for consideration at Antarctic Treaty Consultative Meetings."* The first meeting of the Committee was in 1998.
 - The Committee consists of representatives of the parties to the Environment Protocol and normally meets once a year in conjunction with the ATCM. CEP meetings are also attended by various experts and observers.
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Institutional development of ATS- Secretariat of the Antarctic Treaty

The establishment of Secretariat:

- South Africa's proposal to establish a permanent Secretariat in 1961;
 - 1991 Bonn consensus on the necessity for establishment of the Secretariat (three considerations);
 - 2001 XXIVth ATCM's final decision to establish a permanent Secretariat in Buenos Aires
 - On 1 September 2004, the Secretariat of Antarctic Treaty was established in Buenos Aires
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The main functions of the Secretariat

- Supporting the annual Antarctic Treaty Consultative Meeting (ATCM) and the meeting of the Committee for Environmental Protection (CEP).
- Facilitating the exchange of information between the parties required in the Treaty and the Environment Protocol.
- Collecting, storing, archiving and making available the documents of the ATCM.
- Providing and disseminating information about the Antarctic Treaty system and Antarctic activities

The legal personality of the Secretariat

- International legal personality has been defined as determining who is a "subject of international law so as itself to enjoy rights, duties or powers established in international law, and generally, the capacity to act on the international plane" (Robert Jennings and Arthur Watts, *Oppenheim's International law, vol. 1* [London: Longman, 1992], at 119)
- the int'l personality of an organization must be expressly granted according to the will of its founder members;
- where the organization meets an established criteria, it may be objectively viewed as a legal person without reference to the will of its founders.
- Modern prevailing view: compromise between "implied power" or "presumptive personality": either of express or implied granted.

Limited legal personality of the Secretariat

- The Final report of the XXIV ATCM held in July 2001: The ATCPs will have to consider whether the secretariat should be invested with legal capacity *within the host country only*;
- Both XXIV ATCM/ WPO35 and XXIV ATCM/ WPO37 stated that "the secretariat shall enjoy, in the capacity of its host state, such legal capacity as may be necessary to perform its functions " including: (1) contract; (2) acquire and dispose of immovable and movable property; (3) institute administrative and legal proceedings and (4) conclude a Headquarters Agreement with the Host State, with the prior approval of the ATCM.
- the limited legal personality restricted to the host state will prevent the Secretariat from carrying out many of its specified functions. Considering the rotating nature of the ATCM, in other ATCM countries.

Towards a permanent Antarctic Organization?

- Besides CCAMLR, ATCM and CEP are only international forums within ATS; The Secretariat is also absent of International legal personality.
 - Proposals to establish an Antarctic Organization by UK, Norway and Chile (but opposed by New Zealand and Uruguay) in 2002
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The necessities for an Antarctic Organization

- CCAMLR & CEP's limited competences
 - Limited legal personality of the Secretariat
 - The establishment of Antarctic Organization will not challenge the "freeze principle" of ATS and the "invested interests" of sovereignty claimants
 - Under the current Antarctic Regime, ATCPs and ATCM as the decision-making power, the CCAMLR and CEP as the specialist subsidiary bodies implementing the 1980 CAMLR and the 1991 Madrid Protocol under the ATS, as well as the secretariat as the permanent administrative organ have constituted the basic elements of an intergovernmental organization
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The necessities for an Antarctic Organization

- A permanent Antarctic Organization will clarify or identify the int'l legal status of the Antarctic Regime, benefit the integration of the current inner institutions, promote the interaction between the Antarctic Regime and other international organizations, such as UN, SCAR and other NGOs, further process the transparency, legitimacy and effectiveness of the Antarctic governance.
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The End

Thank you for your patience and
attention!
