

Statut consultatif spécial auprès du Conseil économique et social des Nations Unies (ECOSOC) depuis 2015  
Statut d'Observateur de l'Assemblée de l'environnement des Nations Unies et ses organes subsidiaires depuis 2017

### Antarctica, an international management model?

One speaks rarely of this continent as an international legal challenge, but it regularly makes the headlines due to various sporting achievements realized there or films depicting the lives of certain animals or impressive natural phenomena, evidence of the climate change that man created on the planet: this continent is Antarctica.

I regret that Antarctica is not the subject of more seminars, lessons on international law or the legal education conferences for the general public, all of which would show how the international management of this fragile continent has been a success for nearly 60 years now. Indeed, it is the most developed accomplishment of joint management, of shared skills and intentions to make this continent a place of science and, above all, peace.

Yet, at the end of the 1950s, things did not seem so auspicious. The cold war was entering its most frigid phase wrought with suspicion and distrust, which were at their worst between the two blocs. In addition, what we then called the Third World, only gained political independence with difficulty by revealing a divided world and barely achieved the international weight that it would acquire over the following decade. Protecting the environment was then the least of States' concerns, the concept of this protection was unknown and only economic development counted. But, the best can arise from the worst. This is rarely the case, but such was the case for Antarctica.

The great powers of the time, the USA and the USSR at the forefront, feared the use by the "other" of this vast continent to deploy nuclear weapons and threaten each other's territory. Admittedly, the United States was the first to have the idea to overcome the barrier of mistrust and fear by proposing that a few states negotiate a treaty to reserve Antarctica "exclusively for peaceful purposes and [that it] shall not become the scene or object of international discord"<sup>1</sup>. Thus the Washington Treaty on the Antarctic was signed on December 1, 1959 between the twelve states whose scientists had carried out work on the continent. It entered into force on June 23, 1961. This agreement prohibits any military activity in Antarctica (art.1-1) and establishes freedom of scientific research (Article 2). These scientific activities are founded on international cooperation that must be based on the principle of exchange of information, of personnel, and of observations (Article 3). Therein follows a mechanism structuring the operation and compliance with the Treaty through annual meetings of States Parties. I will not detail here this mechanism, which was enriched over time, but today it is clear that the States, beyond just scientific research, have managed to set up both very detailed legislation protecting the Antarctic environment and regulating all activities that take place there, as well as shared decision-making procedures. This mechanism remains exemplary today and unfortunately is but rarely imitated.

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<sup>1</sup> Second recital to the Antarctic Treaty.

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This image of progress made by the Treaty would not be complete if we did not mention the specific case of the so-called “claimant” States<sup>2</sup>. The fact that seven States<sup>3</sup> claiming sovereignty over a portion of the Antarctic territory have agreed to “freeze” their demands for the period of the Treaty and that those who oppose these claims have agreed to likewise freeze their rejection and protest of the claims - shows a rather rare capacity in the international community of States Parties to overcome the issues of sovereignty and jurisdiction over the territory. In this respect, the provisions of Article 4 of the Treaty are an example which could usefully be followed for resolving certain sovereignty disputes in favor of a truly international collaboration on disputed territories.

Gradually, the institutional and legal framework developed with the Convention for the Conservation of Antarctic Seals (London 1972) and the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR Canberra 1980). With CCAMLR, the Antarctic world shows proof of originality by creating an organization that can both be likened to a regional fisheries management organization (RFMO) since it defines fishing standards in Antarctic waters and it can also be likened to a regional sea convention as it establishes regulation that goes beyond fishing to include marine biodiversity, birds and the marine environment as a whole. It can even create marine protected areas within the meaning of the environmental conventions.

In the construction of this legal structure, a good intention that might have gone wrong was narrowly saved by France and Australia, followed by, more or less willingly, all parties to the Treaty. In the 1980s a convention<sup>4</sup> was negotiated, on New Zealand's initiative, that was to organize the exploration of the continent's mineral and their exploitation. In doing so, New Zealand wanted to implement the rules protecting the environment and limiting States' freedom of action. However, after having negotiated and signed it, France, followed by Australia, campaigned so that this convention never enters into force and that it be replaced by a text whose purpose is the protection of the Antarctic environment from the threats arising from the Washington Treaty. It was a diplomatic tour de force to have dared and have achieved this feat. Thus was born the Protocol on Environmental Protection to the Antarctic Treaty (Madrid 1991) that entered into force in 1998.

The Madrid Protocol and its six annexes are now the cornerstone of the environmental protection in Antarctica. This text is not devoid of poetic lyricism, it states that Antarctica is “a natural reserve, devoted to peace and science” (Article 2) and emphasizes the “intrinsic value of Antarctica, including its wilderness and aesthetic values” (art 3-1). A treaty that protects the “aesthetics” of a place is not so common. The Protocol prohibits “any activity relating to mineral resources, other than scientific research” (Article 7) which marked a break with the failed project of the 1988 Convention.

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<sup>2</sup> “Claimant States” in English; noteworthy is the distinction between the French vocabulary, which finds a fact, and the English vocabulary, which simply refers to a claim ...

<sup>3</sup> France, UK, Norway, New Zealand, Australia, Chile, Argentina.

<sup>4</sup> The Wellington Convention of 2 June 1988 never came into force.

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No human construction is eternal, a legal text probably less so than other constructions. It is thus the responsibility of the States Parties to the Antarctic system to ensure that it still operates for a long time for the good of the entire international community. These treaties and agreements are open to everyone even if they create distinctions when making decisions between states which are more or less involved. The environmental, economic, scientific, political and diplomatic challenges are serious, but one should not despair of the wisdom of States and the expertise of diplomats. Negotiations that began at the United Nations on the high seas could, why not?, usefully take inspiration from some of Antarctic recipes which time has already proven valuable./.

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