

TRAITÉ SUR L'ANTARCTIQUE

XV^e CONFÉRENCE CONSULTATIVE

ДОГОВОР ОБ АНТАРКТИКЕ

XV КОНСУЛЬТАТИВНОЕ СОВЕЩАНИЕ



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WORKING PAPER

SUBMITTED BY THE DELEGATION OF CHILE

DELEGATION OF CHILE

WORKING PAPER

INTRODUCTION

The Preparatory Meeting of the XVth. Consultative Meeting, which was held in Paris, France, from 9 to 13 May of this year, agreed to include in the agenda of the XVth Consultative Meeting the item "Comprehensive Measures for the protection of the Antarctic environment and of its associated and dependent ecosystems" which was proposed by the Delegation of Chile.

The substantive consideration of this matter should conclude in the adoption of a set of rules of a mandatory nature that regulate all of man's activity in Antarctica, without prejudice to the other instruments currently in force.

The unanimous approval of this new item is explained by different reasons. Among them there is need to highlight the increasing diversity and complexity of man's activities in Antarctica, the multiplicity of actors in Antarctic endeavors and the alarm provoked by recent accidents or phenomena such as the ozone layer. In the light of all of this it is necessary to apply the Antarctic Treaty System's invariable policy of anticipating possible events or damages that can occur in the frozen continent and adopt the appropriate measures. This policy, which has not changed in the thirty years of existence of the Antarctic Treaty, has resulted in the preservation of Antarctica as an ecological reserve, without affecting scientific research and the other legitimate uses in the region.

Antarctica was conceived by the Treaty Parties on the basis of a clear conservation approach.

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This approach, which is implied in the Antarctic Treaty, was made explicit in Recommendation III-VIII, adopted in Brussels in 1964. The final preambular paragraph of that Recommendation states that the Consultative Parties "Hereby consider the Treaty Area as a Special Conservation Area."

The work done by the Consultative Parties on the subject has always been governed by this fundamental principle of the conservation and protection of Antarctica.

Something similar occurs with the Convention regulating Antarctic Mineral Resource Activities. On the basis of the protection of the ecosystems, article 4 of that Convention establishes strict environmental protection principles, which have no equal in any other multilateral treaty. These principles operate on the basis that Antarctica is "closed" to all activities of exploitation until the Consultative Parties declare it "open", area by area, by means of a formal consensus based on environmental criteria. This has been strengthened by the obligation to negotiate and adopt an additional Protocol on liability whose objective, in accordance with article 8 of the Convention, is "to enhance the protection of the Antarctic environment and dependent and associated ecosystems. This provision has no other goal than to strengthen the environmental protection of Antarctica.

Such is the case with regard to the Convention on Marine Living Resources, which is governed by an "ecosystem approach" as the fundamental criterion for activities governed by that instrument.

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The Consultative Parties have maintained the moratorium (or voluntary restraint in the opinion of others) which is implied in the Antarctic Treaty and expressly agreed upon in paragraph 8 of Recommendation IX-I, approved during the IXth. Consultative Meeting held in London in 1977 and thereafter renewed up to the present.

Accordingly, the Antarctic Treaty, the Agreed Measures, the Recommendations regarding man's impact, the Conventions that have been adopted or are in force, and the moratorium have given concrete expression to the principle that Antarctica has always been considered as an ecological reserve.

The aforementioned instruments configure a wide and profound framework of environmental protection that has no equal in the international community and has fulfilled its objectives in a very satisfactory way. The need of improving this framework, in the light of the increasing human activity in Antarctica, led to the timely proposal that a new item be destined to the protection of the ecosystems and thus enhance and consolidate Antarctica as an ecological reserve.

With this purpose in mind the Delegation of Chile, that participated in the Preparatory Meeting of Paris, circulated on that occasion a preliminary document which expressed that it was an ethical, juridical and political imperative for the Consultative Parties of the Antarctic Treaty System to perfect the existing provisions on environmental protection.

This would be obtained through the comprehensive treatment of the measures for the protection of the Antarctic ecosystems from the impact of human activities. This proposal, set forth by the delegation of Chile was accepted with interest by the remaining Consultative Parties.

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It also elicited the request that Chile prepare an additional document which would facilitate the substantive consideration of this item during the XVth. Consultative Meeting. That is the objective of this Working Paper.

At the same Preparatory Meeting a "Non-Paper" which suggests a procedural approach and some terms of reference for the substantive consideration was circulated ⁽¹⁾. We consider that the proposed operational approach is useful because it is conducive to the adoption at the XVth. Consultative Meeting of a Recommendation of a general character which would serve as a framework and mandate for a Special Consultative Meeting, which should take place in 1990, in principle, conclude with the adoption of a binding instrument containing the Comprehensive Measures.

The task before the Consultative Parties is difficult and may require of additional meetings besides the XV Consultative to complete it. Thus we are in favor of the proposal to convene a Special Consultative Meeting.

Without prejudice to this, we are of the opinion that the substantive work on the Comprehensive Measures should not be put off to that instance.

On the contrary, the XVth. Consultative Meeting should begin the process by considering a collection of principles and general rules applicable to all activities in Antarctica. Afterward a comparison of existing measures should be carried out an evaluation of their mandatory nature with the object of on the one hand, compile them in an organic way and on the other, to give them the

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(1) PRESENTED BY THE DELEGATION OF THE UNITED KINGDOM.

necessary juridical precision in order to obtain their full compliance.

There may also be a need to detect the omissions that exist and repair them with references to human activities which are not covered by existing measures and thus stipulate which additional provisions are needed.

Likewise, attention should be given to possible measures with regard to activities foreseeable in the short and medium future so as to prepare provisions that have been approved and are in force when these activities eventually come about.

On the other hand, it is useful to anticipate the suitable procedural instruments, in this regard, the XVth Consultative Meeting should adopt a substantive Recommendation that includes the appropriate chapters and convene a Special Consultative Meeting to consider the Comprehensive Measures.

Bearing this in mind, this working Paper develops the following chapters.

(I) PRINCIPLES

This task should necessarily begin by working out a wide conceptual framework applicable to the Comprehensive Measures. This conceptual framework should include principles and objectives, should be addressed generally to the protection of the environment and include a particular dimension related to Antarctica. The specific provisions should conform to these principles and objectives.

All human activity in Antarctica should be subordinate to a set of fundamental rules and juridical principles that specify and complement those already existing in the Antarctic Treaty System. The same approach should apply to any addi-

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nal measures that are approved.

The conceptual framework ought to include traditional formulations that govern the Antarctic Treaty System.

These refer, among others to be considered, to the use of Antarctica exclusively for peaceful purposes and shall not become the scene or object of international discord. Also, the need of preserving for the benefit of present and future generations the Antarctic resources, defining these as its fauna, flora, air, water, ocean and earth, should be reiterated.

It is necessary to also repeat the need to maintain scientific research in Antarctica, increase cooperation to that objective and the disclosure of its results.

The area south of 60° South Latitude falls within the special responsibility of the Consultative Parties, as contained in the Antarctic Treaty and confirmed beginning with the IXth Consultative Meeting and each one after that. It also received international recognition in a specific way during the FAC Conference of 1975.

The general principles of environmental protection should include, inter-alia, those of the Antarctic Treaty, the Recommendations and adopted Conventions. The specific principle of the Comprehensive Measures applicable to Antarctica should begin by the elaboration of those contained in Recommendation XI-4 regarding the vulnerability of the Antarctic ecosystem and the need to preserve it from human interference and complemented by additional concepts. The latter should refer to the need of adopting informed decisions and a definition of what is considered to be unacceptable risk and regarding cumulative impact.

Also, principles of the following nature should be considered for inclusion:

- The responsibility for the protection of the

Antarctic environment and its dependent and related ecosystems falls upon the Antarctic Treaty parties, particularly the Consultative Parties, assisted by SCAR and the Specialized Agencies, in accordance with the Antarctic Treaty.

- The protection of the Antarctic environment and its dependent and related ecosystems should be the fundamental criteria for deciding the activities in Antarctica.

To that end, any activity to be carried out should be subject to the following standards.

All activities, including scientific research, tourism, navigation and the installation of new stations should be preceded evaluation of their environmental impact in order to avoid :

- A significant degradation of the atmospheric, earthly and marine of Antarctica and its dependent and related ecosystem in the face of which effective restoration is not possible within a reasonable period of time;

- A degradation or significant risk in areas of special biological, scientific, aesthetic or wilderness importance;

- that they have negative effects on regional and global climatic patterns. These standards should be enhanced additional elements (Art. 4 of CRAMPA and others).

The principles should include the "ecosystem approach" as its contained in Article 2 of the Convention for the conservation of Antarctic Marine Living Resources, with the adaptation that may be required.

Regarding the question of responsibility, enterprises and individuals are liable regarding the activities they are conducting in Antarctica. States are responsible for the observance of their international obligations related to the environmental protection and preservation of Antarctica. They will be responsible in accordance with international law.

There should also be an expression of the general objectives pursued by the Comprehensive Measures. The special responsibility of the Consultive Parties has already been mentioned. A second general objective should be to conform the Comprehensive Measures to all activities in Antarctica. There may be a need for additional objectives to be included.

II) EXAMINATION AND EVALUATION

A second chapter of the Comprehensive Measures should fall on the examination, evaluation and validity of the measures approved and in force. Recommendations, Codes of Conduct and Agreed Measures adopted for the protection of the Antarctic environment should be included in this evaluation.

This process should necessarily be conducted in such a way that not only individual provisions are examined but also establishing cross-references between Recommendations, Codes of Conduct and Agreed Measures so as to obtain a ample and coherent description of the current state of the Antarctic environmental protection. An additional objective of this evaluation would have to be the detection of specific areas where it is necessary to reduce the discretionality of the State-Party in the observance of the measures.

One fundamental aspect to the examination of the Environmental Impact Assessment of the activities. In this matter it seems appropriate to take as a basis Recommendation XIV-2, particularly the provisions regarding the Comprehensive Environmental Evaluation.

Here it should be established that if any activity that has environmental consequences which are not compatible with the Principles and Objectives of the Comprehensive Measures that activity should not be carried out.

The former may determine the need to establish criteria for what is to be considered a "significant" activity that has consequences for the environment. It is possible to conceive the usefulness of preparing some guidelines to determine the significant character of an activity, including the concept of harmful interference.

One result of an agreement regarding these guidelines could be the need to create a data base of a scientific and technical nature which would be up to date, trustworthy and comparable, which could assist in the determination, on the one hand, of the significant character, and on the other, in the adoption of informed decisions.

To that end it may be useful to elaborate a set of methods and mechanisms that complement the Comprehensive Measures and have as their task to monitor environmental variables and parameters. An "early warning" system on the possible environmental effects of activities could be established. The system of inspections, included in the Antarctic Treaty, could be extended to cover these aspects.

With regard to the Agreed Measures for the conservation of Antarctic Fauna and Flora it may be convenient to evaluate its enforcement and validity and determine what amendments are needed and include them as an Annex to the Comprehensive Measures. In order to do this there may be a need to request a report from SCAR on the current situation of specially protected species which could serve as a basis for the evaluation of the system of permits.

As the same time, it is convenient to study ways and means to increase the coordination between these Agreed Measures and other related legal documents.

It is essential to examine the validity of Recommendations IX-6 and X-7 of hydrocarbon pollution in Antarctic waters, which has not been done recently by the Consultive Parties. The United States has some proposals which could serve as a basis for this. There may be a need to define the Antarctic marine environment.

The examination and evaluation of the provisions in force must include those applicable to scientific drilling in order to reduce the harmful effects to the environment.

III) ADDITIONAL MEASURES

A third chapter is the consideration of additional measures that should be adopted, starting with the Stations, their concentration, functioning and the validity of the Code of Conduct.

With regard to the provisions of the Code of Conduct. SCAR has suggested some amendments to waste disposal. Additional provisions, to be included in the Comprehensive Measures, should be considered to cover the modalities for transferring waste and garbage out of Antarctica. Another idea that has to be given some serious thought is to carry out clean-up operations of existing garbage dumps in Antarctica. It is also possible to consider the possibility to extend these clean-up operations to other activities in Antarctica.

The problems affecting the concentration of stations are not limited only to waste disposal. There are other such as the installation of antennas and electromagnetic interferences which endanger the safety of air traffic in the area. Also, the concentration of stations generate problems with regard to shipping traffic and imposes the need of maintaining large fuel deposits, increasing the potential risk of an ecological catastrophe.

Likewise, the excess of stations in one place has negative consequence with respect of scientific research and the other legitimate uses of Antarctica, risking the possibility of supersaturation of scientific research and considerably increasing the risk of permanent contamination in that area.

One approach to resolving this problem is contained in document ANT XIV WP.36 proposed by Chile, which has in its operative part a suggestion that SCAR offer some advice on:

- steps that possibly could be taken to improve coordination and cooperation in the location and use of stations and other scientific support facilities in the Antarctic, including guidelines by SCAR on areas in which research has not been conducted and which would be useful to know when considering the installation of new stations or other scientific facilities.

- the introduction of zoning schemes for delimiting specific sites and uses, allowing stations to expand in a manner consistent with the attainment of the collective goals for which they were installed and thereby contributing to improve their cooperation and mutual assistance;

- a code of conduct devised to resolve questions of waste disposal, electromagnetic disturbance, the use of drinking water, aspects of land-use and related transport facilities, and to prevent multiple uses from developing into conflicts;

- the possibilities and opportunities for further coordination of scientific and/or logistic facilities within the framework of the Antarctic Treaty System.

Another aspect of the chapter Additional Measures must apply to tourism and non-governmental activities in Antarctica.

It is clearly necessary to regulate these activities, which are useful and important, by strengthening the provisions of the Code of Conduct applicable to the behavior of those that visit Antarctica.

In this sense, it would seem useful to address the regulations of these activities from the point of view of access including its modalities, insurance of a personal nature and also with regard to environmental damage and the responsibility of the enterprises.

There could also be a need to analyze the convenience of establishing some kind of sanctions applicable to enterprises responsible for environmental damages. This is without prejudice to responsibility that may fall upon the State, in accordance with international law.

Furthermore, consideration should be given to the establishment of areas of special tourist interest, in order to concentrate these activities in one place, where they would be conducted subject to strict preservation criteria. This would avoid the scattering of tourists and reduce, in general, polluting consequences of the activity.

Consideration should be given to the approval of a new code of conduct on the expansion of the existing one in order to include these and other specific provisions that may be needed.

There should be some reference to specially protected areas and areas of a special scientific interest. In this regard, it could be useful to elaborate a new concept in order that it not only serve to fulfill scientific objectives but also serve as an instrument of environmental protection.

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That would require an analysis of the protected areas, their degrees and measures of protection and re-examine the decision making process for the establishment of protected areas and their levels of environmental protection

With all this in mind, consideration could be given to the convenience for widening considerably the areas of special scientific interest, adjusting them to the new concept.

There may be a need to include in the comprehensive measures those applicable to the Antarctic ice, bearing in mind what is contained in the Final Act of the IV Special Consultative Meeting, in order to preserve its function in the ecosystems.

Likewise, particular attention should be given to the need to adopt specific measures with regard to widening considerably the areas of special scientific interest, adjusting them to the new concept.

It may be useful to include in the Comprehensive Measures a set of activities which are contrary to them and others which are prohibited, in order to strengthen the environmental protection and assist in the observance of the provision

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IV) ADDITIONAL CONSIDERATIONS

The Comprehensive Measures should be formulated in a mandatory nature and the State-Parties should assume the obligation to fulfill them. In order to do this there may be a need to establish some monitoring schemes which should include an "early warning system" and follow-up procedures of the activities that are being conducted in Antarctica.

The State-Parties should report annually to the other Consultative Parties on the way they are fulfilling the Comprehensive Measures. This should be enhanced by a system of inspections applied to the observance of the Comprehensive Measures. Likewise, the obligation to circulate in a timely manner the Environmental Impact Assessment reports should be established, particularly when they refer to activities that may have a considerable impact. To this end, there may be a need to revise the format and content of those reports. Every Consultative Meeting should have on the agenda the item "Comprehensive Measures", and should consider, among other matters, these reports.

Likewise, there is a need to foresee the compatibility of the Comprehensive Measures with the separate instruments of the Antarctic Treaty System but different from the Treaty itself, and agree on modalities to enhance this.

Chile is still of the opinion that the best way to instrument the proposed Comprehensive Measures is by the adoption of "Agreed Measures". This is an authoritative Recommendation, solemn and mandatory, endowed with the necessary juridical precision.

This approach has the benefit of allowing the attainment of the objective of compulsoriness and precision with the maximum attachment to the Antarctic Treaty itself, permitting the outmost expedition and least possible delays.

V) OPERATIONAL ADJUSTMENTS

It may well be necessary to consider the approval of some operational adjustments in the Antarctic Treaty System to provide for the observance of the Comprehensive Measures.

These adjustments would be of a double nature.

Consideration should be given to the possibility of holding an annual Consultative Meeting, at least for the consideration of the Comprehensive Measures, as of the conclusion of the Special Consultative Meeting proposed to elaborate the Comprehensive Measures.

Furthermore, if there is agreement in the future regarding the possibility of an infrastructure of a limited nature, it should be endowed with the capabilities to cooperate in the environmental impact assessment.

In the mean time, and without prejudice to their respective autonomies it may be useful to consider the role that could be played by SCAR, the Secretariat of the Antarctic Marine Living Resources, and the Managers of National Antarctic Programmes (MNAP'S) in cooperating with the monitoring of the ecosystems. Consideration should be given to the possibility of assisting States in the observance of the Comprehensive Measures.
