Continuing Discussion on Relevant Issues, Trends and Challenges to the Antarctic Treaty System

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to the Antarctic Treaty System**

**Working Paper submitted by the Russian Federation**

***Summary***

This Working Paper aims at providing possible ways forward on Relevant Issues, Trends and Challenges to the Antarctic Treaty System (ATS).

It is proposed to consider a better approach to address priority issues in a more practical way taking into account the role of ATCM within ATS and to identify the first issue to be addressed in accordance with possible arrangements without limiting the scope of the Group as reflected in ATCM Multi-Year Strategic Work Plan 2019.

***Background***

At ATCM XLII, after discussing the Working paper 57 *The Antarctic Treaty in the Changing World* presented by the Russian Federation, the Meeting decided to introduce a new item 16 of the ATCM Multi-Year Strategic Work Plan «Continue cooperation between Parties to proactively identify and address current and future trends related to the ATS» and establish «Informal Discussions on Relevant Issues, Trends and Challenges to the Antarctic Treaty System» at the ATCM Forum to be moderated by the Russian Federation.

The focus of the task of the newly formed Group, as seized in the ATCM Multi-Year Strategic Work Plan (MYSWP), was on, inter alia:

* overview of the application of Article IX (2) of the Antarctic Treaty;
* general analysis of the relationship between the ATS and other relevant international legal frameworks; and
* consideration of Antarctic-related activities by persons that were not under the jurisdiction of States Party to the Antarctic Treaty.

At ATCM XLIII the Russian Federation presented the Working paper 55 *Report of the Informal Discussions on Relevant Issues, Trends and Challenges to the ATS*. Following its consideration item 16 of the ATCM MYSWP was provided for the following: «Continue cooperation between Parties to proactively identify and address current and future trends related to the ATS».

***Findings of Informal Group***

A clear mechanism of work on Relevant Issues, Trends and Challenges is required at the ATCM level. As the identification phase can serve as a base point for further consideration, it might be of relevance to remind about findings of previous rounds of the Informal Group.

First of all, consensus exists in respect of the status of the Antarctic Treaty as «inviolable cornerstone» of the ATS and in respect of its adaptive «capabilities». The task of the Informal Group is to further strengthen the ATS and to adapt it, as appropriate, to emerging challenges - by means of overall, effective and creative use of its potential and flexibility, provided for, inter alia, by Article IX of the Antarctic Treaty.

The main focus of this Group could be presented by three main issues:

* overview of ATS functioning of ATS and of its internal norms:

improving coordination between different ATS bodies (e.g. ATCM-CEP and ATCM-CCAMLR),

implementation of Article IX (2) of the Antarctic Treaty,

approval of Measures by all Consultative Parties;

* analysis of the relationship between the ATS and other relevant international legal frameworks:

between ATS and 1982 UN Convention on the Law of the Sea,

between ATS and Intergovernmental Conference on an international legally binding instrument on marine

biological diversity,

potential legal uncertainty as to exact legal regime to be applied to activities “covered” both by the ATS

legal rules and norms of other international treaties and arrangements;

* consideration of Antarctic-related activities by persons that are not under the jurisdiction of States Parties to the Antarctic Treaty.

These general issues can be examined separately as well as together with specific trends and challenges in order to find practical solutions to reinforce ATS.

As specific challenges of global nature climate change and global warming were emphasised as the most pressing issues to be addressed.

***Identification of a priority issue***

Conditions allow to launch a new stage of work on the topic. The main goal of this document is to promote consideration of possible practical solutions. To that end it is proposed to focus on the challenge of climate change only.

***Climate change – related work within ATS***

Climate change is a cross-cutting aspect within environmental perspective of ATS. In this context soft-law norms of ATCM are of relevance to be analysed. A brief overview from 2015 to 2021 is provided.

Resolution 6 (2015) *The role of Antarctica in Global Climate processes* pointed out a crucial role of Antarctica in the global climate system, acknowledged climatic changes within Antarctica and stressed the importance of improved understanding of the impact of climatic changes on the Antarctic environment and its dependent and associated ecosystems.

*Santiago Declaration on the Twenty Fifth Anniversary of the signing of the Protocol on Environmental Protection to the Antarctic Treaty* (2016) reaffirmed intention of the Consultative Parties to work together to better understand changes to the Antarctic climate and to effectively seek ways to address the effects of climate change on the Antarctic environment and its dependent and associated ecosystems.

Resolution 8 (2021) *Antarctica in a Changing Climate* in para. 2 implicitly states that consideration of climate change should not be limited to the environmental aspects, but also raises an issue of regulation of human activities in Antarctica in this connection.

*Prague Declaration on the Occasion of the Sixtieth Anniversary of the Antarctic Treaty (2019)* underlined the importance and contribution of all scientific investigation in, from and about Antarctica to the better understanding of the implications of climate change and other environmental changes.

*Paris declaration on the occasion of the sixtieth anniversary of the entry into force of the Antarctic treaty and on the thirtieth anniversary of the signing of the 1991 Madrid protocol on environmental protection to the Antarctic treaty* reaffirmed, inter alia, the need to better understand changes to the Antarctic climate and to implement actions consistent with the Paris agreement’s goals.

Outside ATCM framework CCAMLR Resolution 30/XXVIII Climate Change, Declaration on the Occasion of the Fortieth Meeting of the Commission for the Conservation of Antarctic Marine Living Resources, and Declaration of Madrid on the 30th anniversary of the signature of the Protocol on Environmental Protection to the Antarctic Treaty should be noted.

***Further steps to address climate change***

The following *key points* are proposed to serve as a basis for further deliberations.

1. Climate change is a natural phenomenon that present importance to the Antarctic and, therefore, should be addressed within ATS.

Two main aspects could be identified:

a) impacts of climate change on the Antarctic (identification and consideration of impacts is needed with a view to elaborate possible measures at ATCM level)

b) activities within the Antarctic Treaty area that affect global climate change (identification of factors is needed on the basis of which current activities could be analysed)

2. ATS is a robust legal system consisting of various instruments, such as Antarctic Treaty, Madrid Protocol, Convention on the Conservation of Antarctic Marine Living Resources. Relevant decisions of ATS bodies are also to be taken into account.

The Antarctic Treaty remains «inviolable cornerstone» of the ATS, and ATCM as main its political body has to fulfil guiding and coordinating functions in this matter.

On one hand, ATS is based on the sound principles of the Antarctic Treaty, on the other hand, it has significant adaptive capabilities.

3. Certain relevance of legal instruments and data that are outside the ATS: Paris Agreement and the Intergovernmental Panel on Climate Change.

Given the consideration of the above mentioned key points ATCM might benefit from exchange of views on further *«action plan»*. An indispensable condition to address such a complex issue effectively is a step-by-step approach and coordination between different ATS bodies, which may be implemented, as follows.

ATCM could request relevant ATS bodies within their competence for analysis, e.g. to identify and consider existing impacts of climate change on the Antarctic. Results could serve as basis for ATCM to manage the process.

Persistent coordination by ATCM seems to ensure integration of systemic and holistic approach within ATS and as result to promote elaboration of efficient policy solutions.

The approach is in line with understanding, that ATCM should not substitute the work of CEP and its Subsidiary Group on Climate Change, but rather establish a framework for relevant ATS bodies and guide them in order to receive necessary information.

***Recommendations***

The Russian Federation recommends that the ATCM:

1. Discusses further steps in consideration of relevant issues, trends and challenges to the ATS,
2. Considers identification of climate change as a priority issue without prejudice to the scope of the topic as reflected in ATCM MYSWP of 2019 and of 2021,
3. Considers prolonging informal discussions at the ATCM Forum,
4. Updates MYSWP, as appropriate.