Report of the Informal Discussions on Relevant Issues, Trends and Challenges to the Antarctic Treaty System

English version provided by the author

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**Working Paper submitted by the Russian Federation**

***Summary***

This Working Paper aims to summarise the comments and suggestions that Consultative Parties made during the Informal Discussions on Relevant Issues, Trends and Challenges to the Antarctic Treaty System (ATS). Due to COVID-19 pandemic the discussions were rolled over to 2021. Eighteen Consultative Parties have participated in this Informal Group. As a result of these discussions, the Russian Federation suggests to continue these discussions essential to the functioning of the ATS.

***Background***

At ATCM XLII, after discussing the Working document 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, was on, inter alia:

* an overview of the application of Article IX (2) of the Antarctic Treaty;
* a 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).

The work of the aforementioned Group presented a timely opportunity to discuss the overall state of things within the ATS and to confirm that the ATS was functioning successfully coping with the emerging challenges in an efficient and flexible manner. At the same time further issues for the elaboration by the ATCM and other ATS bodies were highlighted as important and suggested that they required extra attention.

***Informal Group***

Discussions according to the new item 16 of the ATCM Multi-Year Strategic Work Plan have proceeded steadily as intersessional informal consultations within an on-line ATCM Forum. In addition, there were outreach efforts on behalf of the Russian delegation for the all-inclusiveness of the discussions and a more balanced output.

During several rounds eighteen Consultative Parties have contributed to this Group’s work. Simultaneously more input was provided by a greater number of Consultative Parties via multilateral and bilateral contacts. This was of particular importance as the topic is quite complex and sensitive. The comments also indicated that the delegations required substantial time to appropriately consider, including on interagency level, the relevant issues. Thus, the process apparently has to be a long-term one.

The functioning of this Group was also considered as a tool to strengthen the mandate of the ATCM as a main political body within the ATS on issues, affecting this System, its integrity and efficiency as a whole. Simultaneously, many delegations stressed that the deliberations on proactive identification of current and future trends and issues related to the ATS trends should not duplicate on-going discussions on specific issues brought to the attention of the ATCM and CEP (e.g. tourist and other nongovernmental activities). These tracks should complement each other: the deliberations on specific, «technical» matters shall give food for thought in terms of identifying current and future challenges to the ATS and vice versa a common understanding as to the existence of a challenge to the ATS may be of utmost importance in terms of prioritizing the activities on specific issues. Ultimately, such cross-fertilization will significantly facilitate the deliberations of the ATCM agenda items devoted to the ATS.

From the outset it was agreed that the process should be organized in a results-oriented manner with a focus on delivering some practical solutions to the ATCM in areas most likely to achieve broad consensus. The content of recently adopted Prague Declaration should be a prominent point of reference, especially, the provisions stressing the importance of ensuring that «all activities in Antarctica are conducted in accordance with the requirements of the Antarctic Treaty system».

Discussions also vividly demonstrated that some issues, which had been raised during the Prague ATCM and in the aforementioned WP 57, need further and more-in-depth study, analyses and, on some occasions, additional information and data to be collected. It concerns, for all, the crosscutting issue of relationship between the ATS and existing or potential legal frameworks of universal character/geographical scope. Some delegations were cautious in agreeing on taking up this issue further due to the fact that the Consultative Parties have different suites of international obligations depending on the other treaties to which they are party. There is an apparent merit in a comprehensive study of these matters, especially from the international law and law of treaties’ point of view, because the ATS may, most obviously, very soon be confronted with significant challenges.

The suggested work is crucial for the Consultative Parties to elaborate and to be able to represent to the outside world, in duly coordinated manner, their joint and carefully crafted position to protect, promote and further strengthen the ATS.

More discussion on the trends and issues to the ATS were welcomed during the upcoming ATCM.

***Conclusions***

Upon the whole there was general support extended to the idea of identifying the most important trends and issues related to the ATS thus launching a valuable addition to the ATCM-mechanism for review of the systematic issues related to the ATS. The issue seemed to be urgent especially taking into account the appearance of quite new and complex sorts of activities in Antarctica, including by various nongovernmental actors, like tourism, and prominently growing inland air-traffic.

Consensus should be stated in respect of the status of the Antarctic Treaty as «inviolable cornerstone» of the ATS and paying high regard to its adaptive «capabilities». The intention of the current exercise 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 flexibilities, provided for, inter alia, by Article IX of the Antarctic Treaty.

There should be noted a broad support expressed to the idea of looking carefully into the issues of improving coordination between different ATS institutions (e.g. ATCM-CEP and ATCM-CCAMLR). In the opinion of the Russian Federation, the trend of blurring their competences may have very strong and negative long-lasting impact on the effectiveness and at the very end, on the integrity of the ATS and ATCM, as its main political body.

It was mentioned by a significant number of delegations that it would be very timely and appropriate to look more closely at what can be done with the optimization of the process of decision-making by the ATCM, e.g. in terms of speeding up the approval of Measures by all Consultative Parties. On that point it might be appropriate, *inter alia*, to refer to the idea, reflected in para.16 of the ATCM-Multiyear Strategic Work Plan, to critically overview the existing practice of implementation of the Article IX (2) of the Antarctic Treaty as to the granting the status of its Consultative Party. Second point in this respect indicated was in respect of ensuring complete and in-good-faith implementation of the Measures and Decisions approved by the ATCM by all Consultative Parties.

The other issue, which enjoyed general support, was the perception of the ATS and application of its legal rules and standards by «third Parties», namely: States which are not Parties to the Antarctic Treaty, as well, as by persons, vessels and aircrafts of their nationality intending to operate in Antarctica. In this context, the Russian delegation drew attention to the issues of relationship between the ATS and UNCLOS and between the ATS and BBNJ, which are becoming more and more of pressing nature, considering that among the 168 UNCLOS States-Parties, only 45 are participating in the Antarctic Treaty.

Another aspect of the same issue, which may be of importance for the States Parties to Antarctic Treaty, but due to cautious positions expressed by many delegations has to be postponed to a later stage was a potential legal uncertainty as to exact legal regime to be applied to objects and/or activities «covered» both by the ATS legal rules and norms of other international treaties and arrangements.

One more global trend, pointed out at the Forum, to be carefully considered by the ATS was climate change and global warming. It was suggested to consider this in two ways: a) the impact of this global trend to Antarctica, its ecosystem and human activities in Antarctica and, at the very end its legal status; and b) the influence of Antarctica, its ecosystem and relevant human activities to the processes of climate change and global warming. In this regard there should be noted the idea to undertake a comprehensive overview and assessment of Antarctic observation efforts - in conjunction with intensifying and making more robust and globally important science contributions by the Parties to international cooperation in scientific investigation in Antarctica. To collectively fill the existing gaps in scientific knowledge about the Antarctic and its ecosystem, including its living marine resources, is definitely one of most important, strategic issues to be addressed in the course of efforts of strengthening the ATS.

At the final stages of the discussions it had also been suggested by the Russian delegation that the issue of influence of the COVID pandemic and the potential of introduction of COVID-19 virus to the Antarctic should be viewed as one of the challenges not previously analysed. There was a support of one delegation, but as the process was in an advanced phase this did not receive further elaboration by other Consultative parties and can be discussed at the present ATCM.

***Recommendations***

The Russian Federation recommends that the ATCM:

1. Discusses the results of the outcomes of the Informal Discussions on Relevant Issues, Trends and Challenges to the ATS;
2. Considers prolonging these informal discussions at the ATCM Forum;
3. Updates MYSWP, as appropriate.