UDC 913(292.3):341.24
DOI 10.24919/2519-058x.13.188692

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Бібліографічний опис статті: Cherniaev, O. & Kovtun, O. (2019). Antarctic as object of the general heritage of humanity and territorial claims on it. *Skhidnoievropeiskyi istorychnyi visnyk [East European Historical Bulletin], 13,* 192–199. doi: 10.24919/2519-058x.13.188692

ANTARCTIC AS OBJECT OF THE GENERAL HERITAGE OF HUMANITY AND TERRITORIAL CLAIMS ON IT

Abstract. The purpose of the study *is to analyze the history of the formation of the legal regime for international peace and security on the sixth continent.* ***The methodology of the research*** *is based on the principles of historicism, systemicity, scientism, verification, the author's objectivity, as well as the use of general scientific (analysis, synthesis, generalization) and special-historical (historical-genetic, historical-typological, historical-systemic, historical and chronological) methods.* ***The scientific novelty*** *is that for the first time approaches to solving the problem of Antarctica governance have been generalized, the threats to international security related to the presence of territorial claims of some states on part of the sixth continent have been highlighted, the ways of formation of these threats and measures of the international society for their elimination have been shown.* ***The Conclusions.*** *The essence of the second legal regime is to recognize Antarctica as a common heritage of humanity, which should positively affect the continued ban on geological exploration in the area, by extending the Madrid Protocol for an unlimited period or adopting a new document for this purpose. Antarctica can be qualified as an*

object of particular international interest. Analyzing the above possible legal regimes and trying to give preference to a fairer mechanism in resolving the issue of the international legal regime of Antarctica, the conclusions obtained are that the sixth continent would be more expedient to consider the concept of the common heritage of mankind along with the opinions of all interested countries of the world – with different levels economic and social development and completely different legal systems and traditions.

Key words: *Antarctica, territorial claims, human heritage, legal regime.*

АНТАРКТИКА − ОБ'ЄКТ СПІЛЬНОЇ СПАДЩИНИ ЛЮДСТВА І ТЕРИТОРІАЛЬНІ ПРЕТЕНЗІЇ НА НЕЇ

Анотація. Мета дослідження *полягає в аналізі історії формування правового режиму забезпечення міжнародного миру і безпеки на шостому континенті.* ***Методологія дослідження*** *спирається на принципах історизму, системності, науковості, верифікації, авторської об'єктивності, а також на використання загальнонаукових (аналіз, синтез, узагальнення) та спеціально-історичних (історико-генетичний, історико-типологічний, історико-системний, історико-хронологічний) методів.* ***Наукова новизна*** *полягає у тому, що вперше узагальнено підходи до розв'язання проблеми управління Антаркидою, виокремлено загрози для міжнародної безпеки, пов'язані із наявність територіальних претензій деяких держав на частину шостого континенту, показано шляхи формування цих загроз та заходи міжнародного товариства до їх усунення.* ***Висновки.*** *Аналізуючи вищевказані можливі правові режими і прагнучи віддати перевагу більш справедливому механізму при вирішенні питання міжнародно-правового режиму Антарктики, отримані висновки зводяться до того, що шостий континент доцільніше буде розглядати згідно з концепцією спільної спадщини людства разом з урахуванням думок усіх зацікавлених країн світу з різними рівнями економічного і соціального розвитку та абсолютно різними правовими системами та традиціями.*

Ключові слова: *Антарктика, територіальні претензії, надбання людства, правовий режим.*

The Problem Statement. Considering the Antarctic as a region not under the jurisdiction of any state, it is customary to adhere to the opinion that, given its importance for all mankind in terms of ecology, the importance of its mineral and living resources, the need to ensure international peace and security, as a common heritage of mankind.

The Analysis of Previous Research. Some lawyers, such as E. Honnold, (Honnold, 1978) believe that since Antarctica should be qualified as a common space, the principles of such spaces are applied to it automatically and no special agreement is required for this. Others prefer the realization of the rights of the international investment community by concluding an appropriate agreement on the international management of the Antarctic as the common heritage of mankind. At the same time, the existing mechanisms in the Antarctic (the Antarctic Treaty and other related documents) are being questioned, since they were not authorized by the international community.

The well-known New Zealand scientist K. Beeby (Beeby, 1986) sees the presence of territorial claims for sovereignty in Antarctica as the main reason for the impossibility of applying the concept of common space, which in his opinion significantly distinguishes this region from the seabed and outer space. This argument is also presented in a 1984 study prepared by the UN Secretariat on the new international economic order. In which it is said that the application of the principle of the common heritage of mankind to areas for which there are already claims connected with great difficulty. For the proclamation of such areas as the common heritage of mankind, the rejection of these claims and the general consent to the application of the common heritage regime to them is necessary, which is politically difficult to implement (The General Assembly, 1987).

The purpose of the study is to analyze the history of the formation of the legal regime for international peace and security on the sixth continent.

The Statement of the Basic Material. Attempts to apply in Antarctica the concept of the common heritage of mankind with the reluctance of countries that have made territorial claims, to abandon them, will inevitably lead to political tensions, friction, and military confrontation.

S. Joiner and E. Theis write that any internationalization of the Antarctic region through the regime of the common heritage of humanity can put an end to the political compromise that made the Antarctic Treaty and mark the beginning of a new period of confrontation on the ice continent (Cherniaiev, 2014, pp. 54–59).

According to S. Joiner and E. Teis, there is no reason to rely on the recognition of the concept of the common heritage of mankind for the Antarctic by countries that refused to recognize it relative to the seabed and the moon. There is laid, as they believe, another hotbed of possible conflict and misunderstanding (Cherniaiev, 2014, pp. 54–59).

Numerous documented sources draw attention to the fact that, unlike the seabed and the moon, the Antarctic has been operating for a relatively long period of time with an international legal regime based on the Antarctic Treaty, which includes the main elements of the development of state cooperation in the area including in relation to the use of Antarctic resources. It is noted that the concept of the common heritage of mankind does not correspond to a number of important components of the current regime, such as CL IV agreement on the freezing of the decision of the question of territorial claims, the requirement of increased attention to environmental protection, the provision on freedom of scientific research.

An active participant in the III UN Conference on the Law of the Sea, Professor B. Oksman believes that the experience of this conference shows that in seeking to declare Antarctica the common heritage of mankind, Third World countries will oppose Antarctic research or sharply limit it.

Some researchers, for example, New Zealanders K. Beeby and W. Mansfield, believe that the concept of the common heritage of mankind has an emphasis on resource exploitation and completely ignores environmental protection. On this basis, they view it as unacceptable in Antarctica, where environmental protection should be given special attention and should take precedence over the exploitation of natural resources. The concept of the common heritage of mankind focuses on the development of resources in the interests of all and especially developing countries, and not on the protection of the environment in which resources are located, notes K. Beeby. He believes that advocating tough environmental control measures in the Antarctic and at the same time establishing a common heritage regime for humankind in this region is to pursue two incompatible goals (Golitsyn, 1983, p. 312; Honnold, 1978, p. 849).

B. Teitenberg and W. Mansfield (Mansfield, 1984, pp. 26–27) draw attention to the fact that the common heritage regime of mankind can be established in Antarctica only with the general agreement of all states. Since the chances for this consensus are insignificant for various reasons, the probability of proclaiming Antarctica the common heritage of humanity, in their opinion almost unbelievable. At the same time, they emphasize that with regard to the seabed and space, the situation was different (Rybakov, 1986, pp. 23–31).

We can single out another approach to the problem of applying the concept of the common heritage of mankind in the Antarctic. Without rejecting the possibility of its announcement as the common heritage of mankind, the Norwegian researcher F. Solly, states that not only privileges but also burdens should be distributed evenly. When an inheritance is

claimed, as F. Solly states, applicants are obliged to pay debts and inheritance tax. In the case of the Antarctic, there is still no income, but there are huge amounts invested in the study of the region. F. Solly believes that there are no problems with declaring Antarctica the common heritage of mankind if all applicants for an inheritance in this area are willing to bear the costs of ongoing research and support of the administrative apparatus necessary to manage the area (Honnold, 1978, p. 849).

In the Soviet literature in the works of A. P. Movchan, S. Molodtsov, Y. Rybakov, I. Tunkin, expressed a unified view that the legal regime of Antarctica, including the regulation of the use of its resources, should be the subject of agreed decisions between the interested states (Hackworth, 1940, p. 452; Beeby, 1986, p. 477; Garritson, 1961, pp. 162–168; Hayton, 1960, pp. 359–360; Honnold, 1978, p. 849; Sollte, 1985, p. 334).

A real democratic and legal solution to the issue of the regime of this territory is possible only on the basis of an agreement between all interested states, on the basis of recognition of their mutual interests and rights, as unanimously noted by Soviet researchers, the Soviet Union, given the priority of navigators in the discovery of Antarctica, as well as the enormous contribution introduced by Soviet scientists to an Antarctic study undoubtedly has the right to participate in any negotiations aimed at making decisions affecting its legal status. The Soviet researchers' approach to the issue of the Antarctic regime is based on the documents already mentioned, which state the Soviet Union. It is a memorandum of the USSR government on the Antarctic regime (1950) and the responses of the USSR Embassy in Washington to the letter of the USA State Department 2 May 1958.

Since the Antarctic Treaty is the outcome of the agreed decisions of the interested states, its provisions on the peaceful use of Antarctica, its non-militarization and neutralization, the declaration of the Antarctic as a nuclear-free zone, freedom of scientific research and cooperation of states for these purposes constitute the main elements of the international legal regime of this region. Further development of the existing regime should take place on the basis of these elements, as well as taking into account other norms adopted on the basis and in development of the Antarctic Treaty. The USSR resolutely opposes any attempts aimed at revising this important treaty, writes Y. M. Rybakov, regardless of the pretexts put forward to justify them. The Soviet Union is a supporter of the comprehensive strengthening of the Antarctic Treaty as one of the most important international legal documents of our day, aimed at maintaining peace and security, both in the Southern Hemisphere and throughout the world. The document on the Antarctic issue submitted by the Soviet Union to the UN in 1984 regarding the international legal regime for the development of Antarctic mineral resources states that it "should not contradict the Antarctic Treaty, but be fully based on its provisions, logically developing and supplementing them with new content, and thereby serve to strengthen this important international act" (Hayton, 1960, pp. 359–360; Honnold, 1978, p. 849).

So, on the basis of the above, it can be said that the problems of modern territorial claims to the Antarctic arise, more and more often to justify their claims, countries formally filed claims to Antarctic lands, to one degree or another adhere to the "theory of sectors" that justifies the distribution of Antarctic to sectors. The sectoral section means the presentation of rights not only to the studied lands, but also to completely unknown ones, which could not always be guessed.

The principles of the geographical neighborhood were put forward to substantiate the rights to the sectors, which makes it possible to refer to the influence of the Antarctic climate

or the military-strategic importance of the polar region; the presence of the state of the coastal strip, the continuation of which supposedly should be the Antarctic lands; parallel latitude, limited to common meridians; the right of geographical discovery.

Considering the ever more decisive role in Antarctic state research, they do not claim sectors, some of the "theorists" of the sectoral section slightly transformed their views. So, Jean da Costa in 1958, still arguing that dividing the Antarctic into sectors seemed to him the simplest and most acceptable way to resolve the issue, he had to admit that the legal grounds for declaring the property of a particular sector were not enough and, ultimately, the issue of rights in Antarctica should be decided by the activity of the state in this sector.

The sectoral division of the Antarctic was sharply criticized. The American lawyer R. Hayton, rejecting the notion of "area of attraction" as the basis of the theory of sectors, writes: "In and of itself, there is no right to own the Antarctic ... One cannot assume that the rest of the community of nations is ready to cede all rights to uninhabited lands, which may be of strategic importance to states randomly located closer to these lands, and it does not matter whether these lands are from time to time the objects of settlement or exploitation" (Tunkin, 1960, p. 120).

The failure of the sectoral division of the territory of Antarctica is obvious. Antarctica is of particularly important international interest, and any unilateral establishment of any sectoral division contradicts the interests of most countries of the world.

The activity of states in the study of Antarctica is largely determined by the requirement of the science itself, immanent to the laws of its development. No one scientific problem of global significance can be solved without knowledge of phenomena in such a huge space as Antarctica. Research in the Antarctic gives impetus to the development of not only geographical or geophysical knowledge, but also many others. The director of the Polar Institute, G. Robin, emphasized that the expenditures on research in the Antarctic should now be justified by the results of solving major scientific problems to a much greater degree than by exploiting the continent's natural resources or income from applied sciences. The American Scientist L. Howard stated that most of the interesting problems in the field of geophysics and biology were solved by those who had been in Antarctica as young specialists. According to him, it is in the interests of the United States to increase the number of scientists engaged in polar research.

When analyzing the factors of global order that influence the process of studying and mastering the Antarctic, it would be wrong to ignore the fact of rivalry between industrialized countries. It hampered the process of integrating scientific research, the cooperation of scientists from different countries, often led to the scientifically unjustified costs of creating Antarctic bases, which mainly have political goals to confirm the sovereign rights of a particular country. But in some cases, this rivalry stimulated the development of the ice continent. The adoption of the Antarctic Treaty of 1959 became the most important factor that allowed to overcome this rivalry, accelerated and deepened scientific cooperation.

The Antarctic Treaty appeared in this situation in a finely balanced compromise. On the one hand, the states that made territorial claims went for an international settlement of the regime for using the Antarctic. But they are far from giving up their rights and continue to persistently remind of these rights.

As for the current situation with territorial claims in Antarctica, currently seven states are making territorial claims for the following sectors of Antarctica: Argentina – between 25 ° and 74 ° west longitude; Australia – between 45 ° and 136 ° east longitude, as well as between

142 ° and 160 ° east longitude, Chile – between 53 ° and 90 ° west longitude; France – from 136 ° to 142 ° east longitude (Adelie Land) Great Britain – between 20 ° and 80 ° west longitude; New Zealand – between 160 ° east longitude and 150 ° west longitude; Norway – between 20 ° west longitude and 45 ° east longitude (Queen Maud Land).

On the other hand, a number of states, for example, Russia and the United States, could themselves put forward territorial claims, but have not yet implemented these rights for the peaceful use of Antarctica, by all states.

Obviously, the Antarctic Treaty has not solved all the problems of this area, and over the past four decades' new ones have emerged. The latest achievements of science and technology, the general development of the productive forces made the Antarctic more accessible and, in fact, made possible the commercial exploitation of Antarctic natural resources. It is the resources of the Antarctic that have caused such heightened interest in this area in recent decades.

In the modern period, the problems of legal regulation of international relations, in particular those directly related to the use of natural resources, are of particular importance. The solution of these problems, in fact, is closely connected with the most important issue of our era – the struggle for peace. It is precisely in connection with the use of resources that the interests of various states most sharply collide, and how these interests can be coordinated depends largely on whether international cooperation will be established or strengthened, or, on the contrary, a situation fraught with dangerous aggravation of relations will be created.

The geopolitical interests of various countries in the Antarctic region are primarily determined by the natural resource potential of the Antarctic (hydrocarbon and mineral resources, biological resources of the Southern Ocean, freshwater reserves in the continental ice sheet, etc.), is also one of the last reserves of humanity. studies of the Antarctic environment, related to the study of global processes (climate change, the "ozone hole" effect, the rise of the World Ocean level under the influence of global warming and the melting Antarctica's species cover, the practical absence of anthropogenic impact on the continent, makes it possible to determine the extent of natural planetary-space processes). Therefore, the Antarctic is becoming increasingly important, both strategically and economically, which is also associated with the territorial claims of a number of countries to certain areas of the Antarctic continent and increases interest in the areas of the continental shelf.

The United Nations General Assembly adopted in 1985, 1986 and 1987 a number of resolutions on the Antarctic issue. It is significant that many states did not vote for him, mainly the parties to the Antarctic Treaty of 1959, including the USSR. The resolutions recognized the interests of mankind as a whole across Antarctica, called for the need for a fair distribution of material benefits arising from the exploitation of Antarctica, but, nevertheless, nothing is said whether the Antarctic is "Common heritage of humanity" or not (Lukin, Klokov & Pomelov, 2002, pp. 11–12).

Proposals that provide for the rejection of territorial claims and the establishment of an international regime in Antarctica based on the concept of the common heritage of mankind are objected to or viewed as unrealistic by a fairly significant group of states.

To solve the problem of developing an international regime of Antarctica in the presence of territorial claims, other proposals were put forward. One of them, which meant freezing the solution of the question of territorial claims, which in 1959 formed the basis of the Antarctic Treaty, and later the whole system of agreements based on this treaty.

Meanwhile, although the Protocol on Environmental Protection of the Antarctic, which introduced a 50-year moratorium on any exploration activities in the Antarctic, act, a num-

ber of countries under scientific cover have long been carrying out geological exploration. According to American experts, a trial of oil production in the Antarctic is scheduled to open no later than 2050.

Today the course of events after 2041, after the end of the moratorium on exploration activities, which was established by the Protocol on Environmental Protection to the Antarctic Treaty, is difficult to determine.

One can agree that "primitive territorial division is still a thing of the past – in any case, it is secondary. The ability of applicants to develop new lands economically comes to the fore. Simply put, a tough battle begins for those whose technologies are more modern, safer, more efficient in terms of returns and who have enough money for them".

The Conclusions. Based on the foregoing, and guided by the current international regulatory and legal acts, the following conclusions can be made, namely:

1. to save from plundering the natural resources of Antarctica, not only by those countries that have certain territorial claims to Antarctica, but also by a number of other countries, there are two ways:

– maintaining the ban on exploration activities in the Antarctic Treaty area by indefinitely prolonging the Madrid Protocol or adopting a new instrument for this purpose;

– recognition of the Antarctic as an object of the joint heritage of mankind, taking into account all the considered circumstances, the second way in my opinion is the best.

2. The international legal regime of Antarctica and the efforts undertaken to strengthen it leave less and less chances for the realization of territorial claims in this region. At the same time, the transformation of the Antarctic into an object of common use would mean the emergence of the advantages of individual states that are technically and economically capable of developing Antarctic resources. Therefore, again, a fairer solution to this problem is to grant the status of the common heritage of mankind to Antarctica.

3. In the current circumstances, until the concept of the common heritage of mankind has received universal acceptance, in Antarctica, the best way to solve the problem of its resources is to consolidate the efforts of the world community aimed at further strengthening the international legal regime of this territory and strengthening responsibility for its violation.

4. The fair resolution of the issues of the international legal regime of Antarctica, according to the concept of the common heritage of mankind, is possible only with the views of all interested countries of the world – with different levels of economic and social development and completely different legal systems and traditions. It is obvious that the coordination of the positions of states on this issue requires a long time.

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The article was received on April 18, 2019.
Article recommended for publishing 06/11/2019.