

Antarctica's Sovereignty: Adoption of Arctic Council Concept as A Better Replacement for Antarctica Treaty System (ATS)

Suyatno Ladiqi & Akmal Hamzah
Universiti Sultan Zainal Abidin

ABSTRACT

The conflict surrounding the sovereignty over the region of Antarctica is a long-standing issue that has plagued the claimant states for decades. The exhaustion of mineral and raw material fuels the hostility and struggle for dominance over the unclaimed region which beliefs to be the largest remaining reserve of oil and gas as well as other valuable natural resources. With growing number of claimant states and the inexistence of proper international framework, the issues over Antarctica is a time-ticking bomb waiting to burst and causes a major friction over the South Pole. The success achieved by Arctic Council in managing the Arctic region inspires this paper to propose and evaluate the idea of establishing an "Antarctica Council" as a crucial recourse to solve what Antarctica Treaty System (ATS) has failed to achieve. This paper is an examination of analysis and critiques in legal documents and international reports that seek a critical approach over the ineffectiveness of existing legal framework and possible improvement in Arctic council concept adoptions.

Keywords: *Antarctica, Geopolitics, Antarctica Treaty System, and Arctic Council.*

Konflik terkait kedaulatan atas wilayah Antartika adalah masalah lama yang telah mengganggu negara-negara penuntut selama beberapa dekade. Penipisan mineral dan bahan baku memicu permusuhan dan perjuangan untuk mendominasi wilayah yang tidak diklaim yang diyakini sebagai cadangan minyak dan gas terbesar yang tersisa serta sumber daya alam berharga lainnya. Dengan meningkatnya jumlah negara penuntut dan tidak adanya kerangka kerja internasional yang tepat, masalah-masalah di Antartika adalah bom waktu yang menunggu untuk meledak dan menyebabkan gesekan besar di Kutub Selatan. Keberhasilan yang dicapai oleh Dewan Arktik dalam mengelola wilayah Arktik menginspirasi makalah ini untuk mengusulkan dan mengevaluasi gagasan pembentukan Dewan Antartika atau "Antarctica Council" sebagai jalan penting untuk menyelesaikan apa yang gagal dicapai oleh Sistem Perjanjian Antartika atau Antarctica Treaty System (ATS). Makalah ini merupakan pengujian analisis dan kritik dalam dokumen hukum dan laporan internasional yang mencari pendekatan kritis atas ketidakefektifan kerangka hukum yang ada dan kemungkinan peningkatan adopsi konsep Dewan Arktik atau Arctic Council.

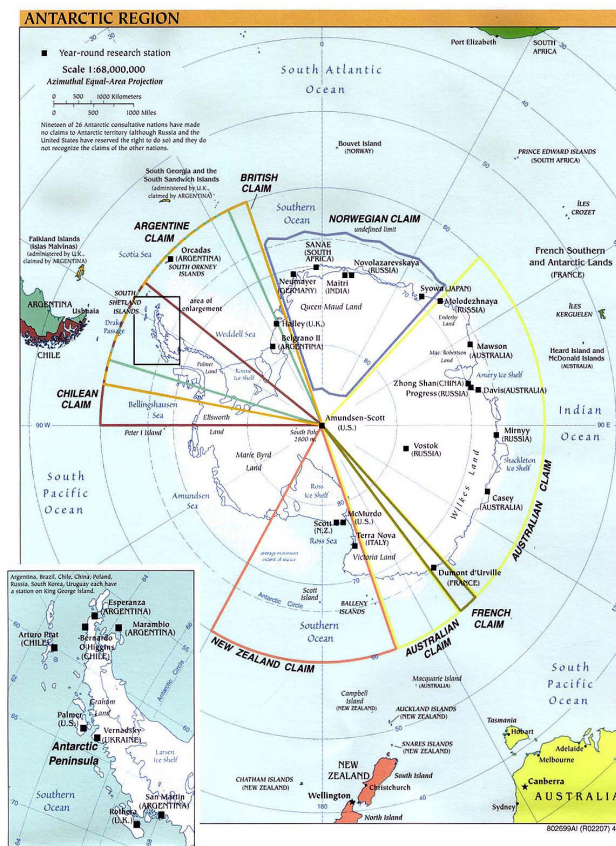
Kata-kata kunci: *Antartika, Geopolitik, Antarctica Treaty System, dan Arctic Council.*

Antarctica's Sovereignty: Adoption of Arctic Council Concept as A Better Replacement for Antarctica Treaty System (ATS)

The region of Antarctica interests no one. During the era of colonialism when states were looking for potential territory for domination, Antarctica was abandoned and forgotten which makes sense since there are many other region worth conquering considering the fact that the territory is 98% covered by ice. However, the view has shifted today. According to Krasnozhon et al. (2015), the region of Antarctica has become a major interest for nations to the extent that there are 7 states (Argentina, Australia, Chile, France, New Zealand, Norway, and United Kingdom) claiming 8 regions in the Antarctica circle. Boczek (1984) mentioned a few other states –particularly Russia and United States of America are in fact have reserved the right to territorial claim in the region. It is fascinating on how a region once ignored is now at the centre of attention.

Governmentless, no permanent population and used only for collective scientific research, the region of Antarctica is governed under the Antarctica Treaty. Antarctica Treaty (1961) highlighted the idea that the treaty was established in order to ensure that Antarctica is to be used exclusively for peaceful purposes and will not become a scene or object of international discord is now ratified by more than 50 states. Antarctica Consultative Meeting (2015) stressed that despite being outlined in the treaty that the region is collective interest of mankind, claimant states still try to create physical presence by establishing research stations which is allowed under the treaty.

Figure 1.
The Claims of states over Antarctica Region



Source: <http://www.worldstatesmen.org/Antarctica.html>

This whole failure is caused by the potential possessed by the unexplored region. With the exhaustion of mineral and natural resources, states are looking for new sources as a safety net. Dodds (1997) discussed the possibility of valuable resources particularly oil and gases under the thick glacier. Consequently, states are striving to put a claim with prospect for future exploitation. Official recognition upon Antarctica is important for these states as the ownership will allow a monopoly over the area instead of collective sharing.

Due to the limitation expressed by Antarctica treaty, Herr & Halls (1989) argued that the exploration of the region constrained and hindered the full potential it may promised. Unlike the Arctic region, Antarctic does not have an intergovernmental forum that provides a means for promoting cooperation, coordination, and interaction among the concerning states. The only governing agreement over the region is Antarctica Treaty. Hunter (1951) described the nature of this treaty is as rigid as any other treaties, which means any alteration or amendment for improvement is hard to be achieved. By the existence of an intergovernmental body akin to Arctic council, it would ease any changes to reach a consensus.

In reality, the law governing Antarctic is out-dated. Additional agreement or protocols made do not have absolute support by signatories of Antarctica treaty. Treaties like Convention for the conservation of Antarctic Marine Living Resources (CCAMLR) and Convention for the Conservation of Antarctic Seals (CCAS) for instance are not ratified by majority of states despite being a member for Antarctica treaty. Joyner (1998) stated that this situation is problematic considering the fact that both the CCAMLR and CCAS are in fact made in order to uphold the principle established in Antarctica treaty. If Antarctic council is established, an easier compliance could be achieved under the pretense of protocol to the main treaty.

The uncertainty of Antarctic might cause many conflicts in the future. Thus, with growing concern over the territorial ownership of Antarctica and increasing global concern over the region, the Antarctica Treaty System (ATS) is seen as no longer fit to govern. Upon the ineffectiveness of ATS, does a new framework akin to Arctic Council possible to replace the ailing system?

Literature Review

In these recent years, propelled by growing activities in the south pole of more specifically Antarctica, numerous articles and research focusing on the political governance of Antarctica have emerged and developed since the conclusion of Antarctica Treaty (Scott 1995). States are growing concern on the contentious issues over the terra nullius status of the Antarctica. ATS was established in collective effort of states as a mechanism to settle the disputing claims and for once to restore order in the region through a framework agreed by all participating states (Scott 1995). With the growing attention of international audience and intensifying demeanor of states in dealing with Antarctica issues, ATS might no longer adequate to manage the growing scrutiny of states' demands (Rothwell 1986). A question emerged from the success of Arctic council in managing the governance of Arctic region, is it possible for the same structure to be replicated and suited for the administration in the Antarctica? The suggestion that the system used by Arctic could be implemented for the betterment

of Antarctica was extracted from a study that suggests, ATS could be used for a better Arctic Governance (Enea, 2012). In this paper, the idea is reversed. This paper seeks to propose that the Arctic Council system is an alternative mechanism for ATS in the administration of Antarctic. Literature review on this study would focus on the problematic policy of states, the inadequacy of ATS administration and how Arctic Council System is a better framework to govern the Antarctica region.

Budding interest over the region has resulted in formulations of policies in the interested states. These policies in some way are problematic and inconsistent with the existing internationally agreed legal framework established in ATS (Ferguson 1956). Ferguson found that the actions of claimant states to the ATS are not parallel to the agreements. His research is also supported by Brady (2010) who focuses on non-claimant states interest and policies in the region. Despite not a claimant state, major power including China which has no territorial claims in the region has started programmes and activities in the area (Brady 2010). Comprehensive study by Central Intelligence Agency (CIA) (1948) concentrated on the idea of United States of America possible engagement in the region. However, the United States of America has yet to raise any claim despite growing attention to the politic of the region (CIA 1948).

John Andrews (1957) published a whole book covering the geopolitical status of Antarctica. Among many things criticized, Andrews (1957) emphasized a need for a new political regime for Antarctica in the face of uncertain future. Two years later, ATS was established. However after decades has passed, the effectiveness of ATS is heavily questioned. Some leading literature on Antarctica politics including Sullivan (2016), Dodds (2016), Howkins (2008) and Krasnozhan et al. (2015) have raise doubt over the governance of ATS. Majority of the literature suggest the scope entrenched by the system is rigid and limited. In fact, some research strive to label the ATS is hindering the full potential Antarctica might promise (Krosnozhan et al. 2015).

Despite the doubt over the ATS system, none of the literature suggests a better system or framework to remedy the lacking of the existing system. The only alternative offered was from Krosnozhan et al. (2015) who argued the idea of privatization of the region is a way for claims to settle while still able to explore the potential of the Antarctica. However, privatization is not an option. No states would concede to the idea of reducing or losing their influence or power over the regional governance. Thus, a study by Chelsea Enea (2012) that suggested ATS to be implemented in Arctic governance sparks an idea if the system implemented by these two poles is interchangeable. The idea is also stated by Samparo (2017), the notion that Antarctica could survive and develop without government claim is proposed under the literature (Samparo 2017). However, there is no literature that focuses on the possibility of Arctic council system to be used in Antarctica governance.

In conclusion, majority of the literature referred in the making of this research paper agrees on one issue. The provision of ATS is problematic and no longer relevant in facing new challenges of Antarctica politics. A new framework or system is considered necessary. However, literature on related issues is relatively small and secluded. Most of the literature tend to focus on identifying the problems instead of offering the solutions. The problems of the Antarctica governance and the ATS administration are well documented at this point but the alternative mechanism to remedy such situations is sorely deficient. Thus this paper seeks to offer a solution. The idea of Antarctica Council –akin to Arctic Council as an alternative to the ATS is proposed.

Analysis on the Possibility of Antarctica Council Establishment

This section will provide the outcome of the questions proposed in the earlier part of this paper with further explanation will commerce in the discussion section later. This paper will focus on answering either it is possible to establish a new system akin to Arctic Council as to replace ATS and either it will be capable of solving the region's contingent issues. This proposed framework from now on will be referred as "Antarctica Council".

The establishment is realistic and possible if states cooperate to make it happens. Arctic Council (2011) pointed out that the establishment of Arctic Council was started by simple declaration made during Ottawa conference in 1996. Since the region already has ATS as a legal framework, the establishment of Antarctica Council could be wholly straightforward. The secretariat under ATS (2009) has already acted as the institution for the current framework. However, the scope of the framework is limited and lightweight. Thus with amendment of the Antarctica Treaty, the current system could be made into Antarctica Council.

The Antarctica council could adopt the system used by Arctic council which are as "high-level intergovernmental forum; to provide a means for promoting cooperation, coordination and interaction among the Antarctic claimant states, with the involvement of the states with interest to the region, and other Antarctica inhabitants on common Antarctica issues; in particular, issues of sustainable development and environmental protection in the Antarctica" (Czarny 2014). This role would play a greater significance to the region as opposed to current ATS scope of power.

In Addition, states are growing anxious over future prospect of Antarctica stability. As Brady (2010) mentioned, despite the fact that Antarctica Treaty has limited the potential threats over the region, the increasing presence of major powers particularly China has capacity of changing the power play which has maintained the order over the territory for years. Even though the treaty forbids any exertion of sovereignty, the fact is states still assert their claim. Thus, in retrospective, states are not really complying with the principles laid down in preambular paragraph of Antarctica treaty. Hence, a decisive system like how Arctic council is would be the necessary structure to solve the issue.

Dispute Settlement and Limited Scope of ATS

There are a few issues that need to be address for this Antarctica council to really be a solution to the issues of the Antarctica. If not, this would only be a redundant system that brings nothing new to the table. This section will address the issues in in-depth level and analyze every possibilities found.

Childs (1988) stated that, one of the key loopholes of ATS is its inability to facilitate dispute settlement. Disputes between states are left to be governed by international mechanism such as International Court of Justice (ICJ), arbitration and other means. Cases under environmental protection such like Whaling Case is settled through ICJ while territorial disputes have not reached an amicable solution yet. These disputes are

left static and as time goes by, the number of claim has increased.

However, despite not having a specific dispute settlement mechanism, Arctic Council has a stronger regulation on how dispute should be solved. In countless occurrence, disputes were solve peacefully in accordance to the principles set forth by the council as well as other internationally agreed multilateral agreements such as United Nation convention and United Nation Law of The Sea (UNCLOS). The Arctic Five in 2008 have agreed to abide to the procedures set forth in UNCLOS for determining the dimensions of each country's Extended Continental Shelf (ECS), suggested that a peaceful settlement of any territorial dispute is more likely than not. Thus, countless of disputes were managed to be settled –such as, Barents Sea Claim, Greenland Settlement in North Arctic Circle, and Hans Island Disargement (Gupta 2009).

ATS, on the other hand, does not have a specific legalities dealing with dispute settlement. Chaturvedi (1990) stated that the closest thing addressed in the treaty in regard to the dispute settlement would be disagreement termination of modifications or amendment. In fact, if a dispute did arise, no compulsory dispute settlement procedure exists. Article IV of Antarctica Treaty has freeze all territorial claim in the area. Thus, all the disputing claims are not solved but yet put into indefinite status in which it wait for time to explode. Overlapping claims by the Argentina, Britain, and Chile, is a long withstanding dispute example which is placed to undetermined status of settlement.

The question is, how long this indefinite status could remain without breaking through as a full-fledged international conflict. Thus, it is considered necessary to draft a permanent practical settlement so that when the time came, an alternative has been prepared to face it. Therefore, by adopting the mechanism employed by the Arctic Five under Arctic council, disputes could be address in a better light and peaceful manner. It could also eliminate the possibility of physical tension or armed conflict to the region.

Regarding the scope, the current governance of ATS is still considered as limited. In fact, the secretariat in charged for the system do not possess any power for coordinating meeting and conference to the members of ATS. Even to that extent, ATS do not have much power to make changes and only discusses issues pertaining to environmental protection instead of solving a larger issues like territorial disputes and overlapping claims by states. So far, the secretariat only organise the Antarctic Treaty Database, where all meetings, papers, and agreements are available for consultation (Naylor et al. 2008).

The ATS system itself is limited in nature. ATS is established to maintain peace in Antarctica without solving its sovereignty question, which has been Antarctic reality for the last sixty years. The operation of the Antarctic Treaty has preserved claimant and potential claimants as the ultimate authority in this governance arrangement. Consultative Meetings provided the spatiality for decision-making, where its frequency and structure characterized a framework designed to preserve Antarctica's status quo. For many years, the Treaty only took place bi-annually and a secretariat was only agreed in 2001 (Jain 1974).

Hemmings (2012) stated that major concerns among original signatories, especially claimant states, was bureaucratization. In terms of an international organization, bureaucratization would lead to the loss of control over decision-making from the

claimant states' side. Keeping procedures informal and flexible has been a constant, so the Treaty would suffer less modification. Thus, the treaty becomes stagnant in nature. Despite new opportunities arises or a new need for changes emerge, the treaty remain motionless as the concerning states fear more of the bureaucracy than to move forward.

Arctic Council, however, is made with better goals. The Council has been variously characterized as a forum for scientific cooperation and information sharing, a body for regional agenda-setting and multilateral policy shaping, and more recently by some commentators, even as a governance mechanism. It is clear that the Arctic Council is an intergovernmental forum, but not a fully mature entity yet. Its role in Arctic and global affairs is evolving as opposed to ATS which remains stagnant over the decades. As opposed to ATS secretariat, Arctic Council is a high-level forum with consensus decision making which helps develop and formulate various numbers of policies related to the Arctic governance (Mendez 2009).

The adaption of Arctic Council with its capability as a forum and decisional prowess will improves the lacking power of the current ATS. If indeed the ATS evolves or replaced by Antarctica Council, the long withstanding issues of policy adoptions, treaty ratification, and dispute settlement could be handled in a more practical manner and better approach. Instead of shoving the imminent issues aside, it could be brought forward and discuss in a level-headed setting of the said high-level forum.

Conclusion

The issues and disputes of Antarctica have been going on for decades. Instead of reaching pacification, the issues are placed under simmer condition while waiting for a comeback. Under the current framework, in which the ATS remains stagnant without any policy changes, the comeback will be a conflict that might be too late to be solved peacefully. Thus, the adoption of Arctic Council concept and its amalgamation into Antarctica Council are considered as realistic approaches to serve the disputing issues. Antarctica Council with broader scope of responsibility and equipped by a better forum for discussion is what the current ATS need to govern the region.

As of today, the aim of maintaining peace without solving the issues of sovereignty is no longer relevant as states are growing anxious over the future prospect of their interest and claim in the region. Along with rapidly growing development and economic atmosphere in global arena, new territory is what a state need in order to balance out any possibilities the future might serve. Thus, the current legalities of Antarctica that prohibit exploration and exploitation of states are not only limiting the region's potential but also states' aptitude.

The adoption of the new Antarctica Council concept is deemed possible by looking at how states past behavior towards the formation of ATS and Arctic Council. However, the states might need a convincing reasoning before deciding towards the adoption. Drafting of a new framework might not be a hassle but getting states to agree is a whole new issue. Thus, a capable figure is required to endorse this proposed framework to other states. Only with collective agreement, this framework could be effective.

Overall, the old Antarctica governance –The ATS is no longer suitable to suit today's demands and claims. It is about time for changes to take place as to promise for

a better future not only to the region but to the international politic as well. The stagnant model needs to evolve and become more flexible in order to serve the growing needs of Antarctica geopolitics.

References

Book

- Chaturvedi, S., 1990. *Dawning of Antarctica: a geopolitical analysis* (Vol. 1). South Asia Books.
- Dodds, Klaus and Scott Polar Research Institute, 1997. *Geopolitics of Antarctica: Views from the Southern Oceanic Rim*. Wiley-Blackwell.
- Herr, R. and Hall, R. 1989. "Science as currency and the currency of science", in Handmer, J.W. ed., 1989. *Antarctica: Policies and policy development* (No. 1). Centre for Resource and Environmental Studies: Australian National University.
- Christie, E.W.H., 1951. "The Antarctic problem: an historical and political study". London: Allen & Unwin.
- Joyner, C.C., 1998. *Governing the frozen commons: The Antarctic regime and environmental protection*. Columbia SC: University of South Carolina Press
- Kelly, P. and Jack Child (eds.), 1988. *Geopolitics of the Southern Cone and Antarctica*. Boulder: Lynne Rienner Pub.

Journal

- Andrews, J., 1957. "Antarctic geopolitics", *Australian Outlook*, **11**(3): 3-9.
- Boczek, B.A., 1984. "The Soviet Union and the Antarctic Regime", *American Journal of International Law*, **78**(4): 834-858.
- Brady, A.M., 2010. "China's rise in Antarctica?". *Asian Survey*, **50**(4): 759-785.
- Czarny, R.M., 2014. "The Arctic Council's Role In The Region And On The International Arena". *Rocznik Bezpieczeństwa Międzynarodowego*, **1**(8): 26-37.
- Gupta, A., 2009. "Geopolitical implications of Arctic Meltdown". *Strategic Analysis*, **32**(2): 174-177
- Hemmings, A.D., 2012. "Considerable values in Antarctica". *The Polar Journal*, **2**(1): 139-156.
- Jain, S.C., 1974. "Antarctica: geopolitics and international law". *Indian Yearbook of International Affairs*, **17**: 249.
- Krasnozhon, L.A. et al., 2015. "The Privatization of Antarctica". Washington and Lee

Journal of Energy, Climate, and the Environment, **6**(2): 379.

Mendez, T., 2009. "Thin ice, shifting geopolitics: The Legal implications of Arctic Ice Melt". *Denv. J. Int'l L. & Pol'y*, **38**:527.

Naylor, S., et al., 2008. Science, geopolitics and the governance of Antarctica. *Nature Geoscience*, **1**(3):143.

Scott, S., 1995. The Geopolitical Organization of Antarctica, 1900-1961: The Case for a Revisionist Analysis. *Australian Journal of Law and Society*, **11**: 114-115.

Official Publications

Antarctica treaty 1961, opened for signature 1 December 1959, entered into force in 1961.

History and Current Status of Claims in Antarctica, 1948. Virginia: Central Intelligence Agency (CIA).

Thesis and Dissertation

Enea, C., 2012. The Future of Arctic Sovereignty: Who Should Own the Arctic, Individual Countries Or Should it be" internationally Owned"?. Doctoral dissertation. Webster Groves: Webster University.

Ferguson, D.C., 1956. Attempts to Establish Sovereignty in the Antarctic. Doctoral dissertation. Los Angeles: University of Southern California.

Rothwell, D.R., 1986. Antarctica under threat: an examination of the Antarctic treaty system and its response to the challenges of the 1980's. Master Thesis. Calgary: Political Science, University of Calgary.

Sampaio, D.P., 2017. The Antarctic exception: sovereignty and the Antarctic Treaty governance. Doctoral dissertation. São Paulo: Instituto de Relações Internacionais Universidade de São Paulo.

Report

Antarctic Treaty Consultative Meeting, 2015. Final Report of the Thirty-eighth Antarctic Treaty Consultative Meeting. Secretariat of the Antarctic Treaty.

Online article

Arctic Council, . (2011). "History of the Arctic Council", [Online] in <https://www.arctic-council.org/index.php/en/about-us/arctic-council> [accessed 09 April 2018]

Secretariat of Antarctica Council, 2009. "The Secretariat of the Antarctic Treaty"

Antarctica's Sovereignty: Adoption of Arctic Council Concept as A Better Replacement for Antarctica Treaty System (ATS)

[online]. in <https://www.ats.aq/e/about.html> [accessed 9 April 2018]

Worldstatesmen. 2018. "Antartica" [Online] in <http://www.worldstatesmen.org/Antarctica.html>. [accessed 9 April 2018]