



The law, politics and science in the Consultative Party acknowledgement process: A **worrisome** precedent at Kochi

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ATS Resilience
under
Anthropocene

August 2024

**Consultative Parties
(29)**

Africa



**South
Africa**

Western Europe and others



Australia



Belgium



France



New Zealand



Norway



UK



USA



Germany



Italy



Spain



Sweden



Finland



Netherlands

Asia-Pacific



Japan



India



China



Korea, Repulic of

Eastern Europe



Russian Federation



Poland



Bulgaria



Ukraine



Czechia

Latin America and Caribbean



Argentina



Chile



Brazil



Uruguay



Peru



Ecuador

**Non-Consultative Parties
(28)**



Denmark



Austria



Greece



Canada



Switzerland



Monaco



Portugal



Iceland



San Marino



PapuaNG



Korea (DPRK)



Türkiye



Malaysia



Pakistan



Kazakhstan



Mongolia



Saudi Arabia



Romania



Hungary



Slovakia



Estonia



Belarus



Slovenia



Cuba



Colombia



Guatemala



Venezuela



Costa Rica

1. What happened at 46 ATCM in Kochi?

Belarus and Canada's bit for CP: no consensus again

- ✓ Of course, the politics!
- ✓ For **the institutional legitimacy** of the ATS, what has been recorded in the Final Report (as agreed by all CPs) has important **precedential significance**.
- ✓ Belarus case recorded “politics” and “quality of science” for not acknowledging its CP status.
- ✓ Canada's case recorded lack of “national activities reported in EIES” for negative response.

46 ATCM Final Report language (as adopted by consensus):

Outright political reason: “Many Parties further noted that under *current political circumstances*, discussed at ATCM 45 and ATCM 46, they did not consider that an agreement on this issue could be reached.”

Quality of science: “Other Parties stated they did not consider Belarus had fulfilled the requirements contained in Article IX (2) of the Treaty as well as in Decision 2 (2017) noting concerns regarding *the quality of its science and diversity of its programme* of Belarus's application remained.”

Activities reported in EIES: “Some Parties noted that although Canada demonstrated a commitment and support of science, they did not consider it had met the requirement in Article IX (2) for the need to have conducted substantial scientific research activity in Antarctica, with *few scientific and national operational activities* provided in EIES or IPs presented.”



Photo: May 30 final plenary: How to record the “secret” meeting discussion on Belarus and Canada's requests to become CP.

1. What happened at 46 ATCM in Kochi?

How shall we understand these Report languages?

→ Lawyer's responsibility: interpretation based on rules and practice

Required science criteria under Art. IX (2) and/or Decision 2 (2017):

- ✓ **In-situ** science (**Art. IX (2)**: substantial scientific research activity there)
 - ✓ **National** (governmental) scientific and logistical **activities** on **EIES**
- vs
- ✓ Criteria based on **scientists' outcome** (**Dec. 2 (2017)**).
 - ✓ Scientific **papers** in peer-reviewed **journals**, etc. Dec. 2 (2017) as "*a major deviation*"?

"Current political situation":

- ✓ Pure politics? OR any legal justification attempted? YES! "discussed at 45 and 46 ATCM"
- ✓ Ukraine (and informally some European CPs) tries to justify such reasoning based on **Art. X of the Antarctic Treaty**.

2. The law on Consultative Party (CP) status

Legal nature of CP acknowledgment procedure

- ✓ Art. IX (2): “**entitlement**” =legal right= of **Treaty Party** to become CP once substantive science criteria (nothing else) is factually satisfied.
- ✓ Big discussion in 1977 (first case on Poland): Admission (UK) or **Acknowledgement** (US)? US’s view prevailed, but the acknowledgment of facts will be made by the **agreement of all CPs**.
- ✓ **Reference to Art. X** (in 1977 up to now): The authority (even obligation) of CPs to “urge” candidate party to approve all previous measures in effect.
- ✓ Why this additional condition, which is not reflected in Art. IX (2), can be urged?
 - ① Level (legal) playing field in Antarctica for all CPs, existing and newcomers.
 - ② Measures are adopted “in furtherance of the principles and objectives of the Treaty”.
 - ③ Art.X obliges CPs not to allow “any activity in Antarctica contrary to the principles and purposes of the Treaty”→ all CPs must be bound by such measures in effect.⁵



Photo: May 20 CEP: Delegation of Belarus intervening.

3. Politics engaged in legal framework:

How can one argue (legally) “current political circumstance” as justifiable reason for not acknowledging Belarus’ CP status?

- End of the Rule of Law in ATS? “If politics requires so, the law must be subdued”.
Luckily, not heard (at least formally in the open discussion) during the Kochi ATCM.
- (Potential) legal arguments mentioned during 45 and 46 ATCM:
 - a. Compliance with UN Charter as requirement of all Treaty Parties (Ukraine, 2023).
 - b. Art. X and preamble of the Treaty (Ukraine and some European CPs, 2024): potential logic: The Treaty embodies the non-use of force principle of UN Charter (4th preamb.), and violation of such principle (**even outside of Antarctica**) also threatens peaceful use in Antarctica. Art.X requires CPs to exert efforts that no one engage in activity in Antarctica contrary to the principle of peaceful use; and the CP acknowledgement procedure explicitly refers to Art. X as the legal authority of such efforts.
 - [c. Suspension of right as a countermeasure under the law of state responsibility.]

Legally convincing? Politically appropriate?

4. Conclusion: dangerous legal precedent contained by politics

For the continuing resilience of the Antarctic Treaty System, the legal and precedential consideration should effectively inform a policy decision that will avoid the worst-case scenario.

- **Legal reasoning:** extremely tenuous. What would be the **systemic cost** of taking such tenuous legal reasoning?
- ✓ **The end of Antarctic special regime strength** (Antarctic legal exceptionalism): Consultative Party acknowledgment procedure is at the core of the Antarctic special regime: the balance between openness and effectiveness, based on actual scientific interest in Antarctica.
- ✓ **A dangerous precedent:** any future candidate with “alleged” or even “accomplice to” violation of principles of UN Charter (cf., protection of human rights, sovereign equality, etc) might face an objection from CP arguing that it threaten “international harmony in Antarctica” and, based on Art.X, justifying the denial of the CP status.
- ✓ **Untenable unfairness between existing CPs and candidate NCP:** Worst-case legal precedent-setting must be politically contained. How?

4. Conclusion: dangerous legal precedent contained by politics

For the continuing resilience of the Antarctic Treaty System, a political wisdom should effectively inform a (recorded) legal reasoning to avoid setting a devastating precedent.

- ✓ The legal relevance of **AT Art.X** in CP acknowledgement procedure should be politically contained in the context of urging candidates **to approve effective ATCM Measures**. Keep the current interpretation and practice.
- ✓ The legal relevance of **AT preamble** referring to UN Charter should be politically contained as urging the peace and harmony **in the region of Antarctica** which hopefully will lead to world peace pursued by the UN, and not vice-versa.
- ✓ The reference to “current political circumstances” should be politically contained in the **very specific and concrete context** of one CP’s aggression against another CP, with the Non Consultative Party seeking CP status actively assisting such aggression.

[Ukraine being a victim of such aggression may lawfully take **countermeasures against Belarus** as responsible state, and such measures may include non-performance of treaty obligation towards the responsible state. Other CPs in the case of **breach of jus cogens** are required to cooperate with the victim State to end such breach through “lawful means”. ILC Articles on Responsibility of States (2001).]

Reference

- ✓ **ATCM Final Reports:** 14th (1987, Rio de Janeiro); 45th (2023, Helsinki); 46th (2024, Kochi: not yet publicly available)
- ✓ **ATCM Documents:**
 - UK proposal (1977). ANT/SCM/1.
 - US explanatory note (1977). ANT/SCM/4.
 - Decision 2 (1997): Consultative Party.
 - Decision 7 (2017): Guidelines on the procedure to be followed with respect to Consultative Party status
- ✓ **Generally on Consultative Party status, criteria and procedures:**
 - Auburn (1974). Consultative Status under the Antarctic Treaty, *ICLQ* 28 (3).
 - Watts (1992). *International Law and Antarctic Treaty System*: pp.15-16.

”This provision confers a right to attend Consultative Meetings if the conditions are satisfied....it would be equally inappropriate for the Consultative Parties to establish an admission procedure which might derogate from a right conferred by the Treaty.... In effect, therefore, the Consultative Parties do not engage in a process whereby they admit an acceding State to the status of a Consultative Party, but simply “acknowledge” that it has met the prescribed requirements and, as a consequence, has the right to appoint representative to participate in Consultative Meeting”.
 - Pannatier (1994). Acquisition of Consultative status under the Antarctic Treaty, *Polar Record* 30 (173).
 - Jabour (2015). Why there has been a long peace, *The Yearbook of Polar Law* 8.
 - Molenaar (2021). Participation in the Antarctic Treaty, *Polar Journal* 11 (2).
- ✓ **Generally on Art. X of Antarctic Treaty (not much!)**
 - Brunner (1987 and 1996). Article 10 of the Antarctic Treaty Revisited, *International Law for Antarctica (1st and 2nd ed)*.

Looking towards 2026 ATCM in Japan

Thank you for listening, and
look forward to welcoming you in **Hiroshima ATCM in May 2026**



Photo : January 2017
Adelie penguins at
Japanese penguin
research field,
Mizukukuriura,
East Antarctica