

LIABILITY IN CONNECTION WITH ENVIRONMENTAL EMERGENCIES IN ANTARCTICA

A. M. Solntsev,

post-graduate student, International Law Department,
Peoples' Friendship University of Russia

O. D. Milovidov,

4th year student, Environmental and Land Law Department,
Lomonosov's Moscow State University

Antarctica is a territory possessing a special status in international law. Thanks to efforts of the world community the international legal system named the «Antarctic Treaty System» (ATS) has now been created and has been actively developing for almost 50 years; SAT includes: the Antarctic Treaty, measures operating within the framework of this Treaty, individual international agreements connected with it and measures operating within the framework of these agreements. For today ATS includes¹:

Six basic treaties, regulating relations between states in Antarctica are:

The Antarctic Treaty of December 1, 1959 (Washington),²

The Convention for the Conservation of Antarctic Seals of June 6, 1972 (London);³

¹ For the texts see: *Lukin V.V., Klokov V.D., Pomelov V.N.* Antarctic Treaty System. Legal acts, commentaries. SPb., 2002 (in Russian). It may be cited a number of international agreements which do not make part of the ATS, but which are of a great importance for environment protection of the Antarctic: International Convention for the Regulation of Whaling (Washington, December 02, 1946), Convention for the Protection of the Ozone Layer (Vienna, March 22, 1985) and Protocol on Substances that Deplete the Ozone Layer (Montreal, September 16, 1987), Convention on Persistent Organic Pollutants (Stockholm, May 22, 2001), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Washington, March 03, 1973), Convention on the Conservation of Migratory Species of Wild Animals (Bonn, June 23, 1979), Convention on biodiversity (Rio de Janeiro, December 5, 1992), etc.

² 46 states have ratified the Convention. The Contracting parties to the Convention are divided into Consultative Parties (which are decision-making participants and are considered as such until they demonstrate their interest in Antarctica by carrying out substantial scientific activity there) and not Consultative Parties. As of November 01, 2007, there are 28 Consultative parties (12 original and 16 acceded parties: Bulgaria, Brazil, Germany, India, Spain, Italy, China, Republic of Korea, the Netherlands, Peru, Poland, Ukraine, Uruguay, Finland, Sweden, Ecuador) and 18 participants which are not Consultative parties (Belarus, Czechia, Slovakia, Denmark, Romania, Papua New Guinea, Hungary, Cuba, Greece, the North Korea, Austria, Canada, Colombia, Switzerland, Guatemala, Turkey).

The Convention for the Conservation of Antarctic Marine Living Resources of Antarctic May 20, 1980 (Canberra);⁴

The Convention on the Regulation of Antarctic Mineral Resource Activities of 1988 (Wellington);⁵

The Protocol on Environmental Protection to the Antarctic Treaty of October 10, 1991 (Madrid);⁶

The Agreement on the Conservation of Albatrosses and Petrels (Hydrobatidae) of June 19, 2001 (Canberra).⁷

The measures operating within the framework of the Antarctic Treaty;
The measures operating within the framework of other treaties.

«Measures» mean the documents adopted at annual conferences within the framework of a particular ATS international treaty. The undertaking measures basically concern narrow special issues, which are of interest for experts investigating problems of the Antarctic, and do not attract attention of international law specialists. In the Russian science a legal analysis of ATS⁸ is undeservedly given a low attention; meanwhile, not so long ago an event deserving a steadfast attention and careful legal analysis took place.

³ The Convention entered into force on March 11, 1978. As of November 01, 2007, 16 countries have ratified it (including Russia).

⁴ The Convention entered into force on April 07, 1982. As of November 01, 2007, 34 countries have ratified it (including Russia).

⁵ The Convention has not entered into force. The international community has condemned a possibility of industrial exploitation of mineral resources of Antarctica, having expressed a «deep regret» in connection with the adoption of the given Convention in the UN GA Resolution №43/83 of December 7, 1988.

⁶ The Protocol entered into force for Russia on January 14, 1998. As of November 01, 2007, the Protocol has been ratified by 32 states.

⁷ The Agreement was worked out under the aegis of the Convention on the Conservation of Migratory Species of Wild Animals, it entered into force on February 01, 2004. As of November 01, 2007, 11 countries has ratified it; Russia does not participate.

⁸ Abashidze A.H., Solntsev A.M. Strengthening of ecological liability in the Antarctic Treaty System (on the way to the International Polar year (2007 — 2008))/State and Law. 2006, № 10. — p. 59-66; Avkhadeev V. R. History of development and modern aspects of the international legal status of Antarctica. Abstract of diss. cand. jurid. sciences. Kazan', 2007; Lukin V.V., Matveev A. A. International legal aspects of scientific researches in Antarctica (by the example of the Lake Vostok)/International Lawyer. 2005, № 3. — p. 46-56; Solntsev A. M. Environmental protection in Antarctica/International scientific-practical conference devoted to the 75th anniversary of the MSJA: Traditions and innovations in the Russian law. Collection of articles. M, 2006. p. 208-209 (in Russian). In the foreign science one may note the following researches: The Antarctic legal system and the environmental issues / Ed. G. Tamburelli. Giuffrè Editore. Milano.2006; International Law for Antarctica / Ed. F. Francioni, T. Scovazzi. 2ed ed. Kluwer Law International, 1996.

In 2005, the XXVII Antarctic Treaty Consultative Meeting (ATCM) adopted the Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty entitled “Liability in connection with environmental emergencies”.⁹ The document had been discussed for 13 years and it will enter into force after its adoption by 28 Consultative Parties. The text of Annex VI was referred to as the “Stockholm Annex” by the place of the final negotiation.¹⁰

According to art. 4 of the Protocol, the Annexes to the Protocol shall form an integral part thereof and may be adopted and become effective in accordance with Article IX of the Antarctic Treaty. Under par. 4 art. IX of the Antarctic treaty of 1959, the measures adopted at the ATCM shall become effective when approved by all the Contracting Parties whose representatives were entitled to participate in the meetings held to consider those measures. Thus, in order that Annex VI will enter into force, each Consultative party is obliged to inform the USA, as the depository Government, in writing that it has approved the Measure 1 (2005). For today only Sweden has adopted a domestic act which will allow it to implement Annex VI.¹¹

In the Russian Federation, unfortunately, there is no uniform normative document on the activity in the Antarctic.¹² The draft Environmental code of the Russian Federation does not include provisions on protection of Polar Regions (the Arctic and Antarctic) and activities thereupon.¹³ However, according to the «Schedule of law drafting activity of the Government of the Russian Federation for 2007»¹⁴ the bill «On regulation of activity of the Russian citizens and legal persons

⁹ Measure 1 (2005).

¹⁰For a detailed comment see: Abashidze A.H., Solntsev A.M. Strengthening of ecological liability in the Antarctic Treaty System (on the way to the International Polar year (2007 — 2008))//State and Law. 2006, № 10. — p. 59-66 (in Russian).

¹¹ Swedish Antarctica Act (SFS 2006:924). Entered into force on October 1, 2006.

¹² Now only two documents may be noted: Regulation of the RF Governmental of December 11, 1998 N 1476 «On the adoption of the Order of consideration and issuance of permissions for the activity of Russian physical and legal persons in the area of operation of the Antarctic Treaty» and the Order of Federal Hydrometeorology and Environmental Monitoring Service (Roshydromet) of July 10, 2000 N 102 «On the adoption of the application form for receiving the permission to carry out activity by Russian physical and legal persons in the area of operation of the Antarctic Treaty». A similar legal gap takes place also in the legal regulation of issues in the Arctic. Now there is only a “Draft Concept of a sustainable development of the RF Arctic zone” of 2006 and draft federal law «On the Arctic zone of the Russian Federation» of 2006.

¹³ The text of the draft Ecological code of Russia is available on the official Internet site of the Ministry of natural resources of Russia: www.mnr.gov.ru (in Russian).

¹⁴ The Regulation of the RF Government of December 29, 2006 N 1852-r. (in Russian). Those responsible for preparation and support of the bill are: Roshydromet, Ministry of

«On regulation of activity of the Russian citizens and legal persons in the Antarctic» was scheduled for consideration at the session of the RF Government in November, 2007 and submission to the RF State Duma in December, 2007. We will notice, that the concept of the federal law¹⁵ was developed in 2006, i. e. already after the adoption of the Measure 1 (2005), therefore in its text it is fixed, that «the process of approval of this Measure by the Government of the Russian Federation and its realization are conditioned by a legislative determination of responsibility and a corresponding measure of punishment in relation to Russian citizens and the organizations committing wrongdoings specified in the Annex VI to the Protocol». It is interesting to note the process of approval of documents adopted at the ATCM — the public legal practice shows that the Measures adopted at the ATCM are approved by the RF Government regulations. Thus, in 1999 the RF Government, after the coordination with interested federal executive authorities, approved the Recommendations and Measures adopted at the XV-XXI ATCM during seven years,¹⁶ and instructed the interested federal executive authorities to ensure realization of the Recommendations and Measures. In 2005 the Measures adopted at the XXII-XXVI ATCM and XII Special ATCM were approved.¹⁷

In 2007 on the XXX ATCM (India, New Delhi, April 30, 2007 — May 11, 2007) the United Kingdom offered for discussion the document entitled «Antarctic liability: domestic implementation of Annex VI to the Environmental protocol: key issues and areas of difficulty».¹⁸

The United Kingdom noted that the various issues included in the list had been contributed by experts from a wide range of Parties. It was not intended to constrain Parties in their interpretation of the Annex, but to facilitate exchange of ideas and experience among those involved in preparing legislation. There were several areas where experts could

Foreign Affairs of Russia, MNR of Russia, and Ministry of Agriculture of Russia with the participation of the Russian Academy of Sciences.

¹⁵ For the text of the concept of the federal law see: the Maritime law. 2006. №2 (in Russian). This magazine is a network resource: www.sea-law.ru/journal/2006-02/ /law.html

¹⁶ The Regulation of the RF Government of May 10, 1999 N 518 «On Recommendations and Measures adopted by the Consultative meetings of the contracting parties to the Antarctic Treaty» // Compilation of Laws of the RF of May 17, 1999, N 20, p. 2442 (in Russian).

¹⁷ The Regulation of the RF Government of June 10, 2005 N 369 «On measures adopted by the Consultative meetings of the contracting parties to the Antarctic Treaty» // Compilation of Laws of the RF of June 20, 2005, N 25, p. 2506.

¹⁸ The Information document 054 (IP 54) «Liability in Antarctica: Implementation of Annex VI to the Protocol on environmental protection into the internal legislation».

usefully pool information, for example about the availability of adequate affordable insurance cover. Many delegations expressed appreciation for this paper and thanked the United Kingdom, as it would be of great assistance in their respective paths towards ratification of Annex VI.¹⁹ Delegates exchanged views on a number of the issues listed in IP 54, including: the meaning of “strict liability” in common law and civil law systems, and how to translate it into Spanish; the relevance of identifying activities covered by Article VII.5 of the Antarctic Treaty; the availability of suitable insurance cover; the extensive interface with various aspects of domestic legal systems, and the need by many Parties for coordination with a range of Ministries and Agencies.²⁰

The adoption of the above mentioned international act greatly contributed to the codification and progressive development of the institute of objective liability of states, especially considering the fact of the termination of consideration in 2006 of the topic “International liability for the injurious consequences of acts not prohibited by international law” by the UN International law commission.²¹

As a whole, the Appendix VI “Liability arising from environmental emergencies” to the Protocol on environmental protection can be considered as a new powerful international legal instrument in the sphere of strengthening of the institute of liability for a damage in connection with activity within the scope of operation of the Antarctic Treaty. An expedient adoption by the 28 Consultative Parties of Annex VI will strengthen the Antarctic Treaty System and will not allow amplifying the activity of the countries, offering to use their national legis-

¹⁹ The final report of the XXX ATCM. Part I. Par. 104.

²⁰ In the Russian Federation, according to the «Interdepartmental distribution of duties on ensuring the participation of the Russian Federation in the activity of bodies and organizations of the Antarctic Treaty System» (the Regulation of the RF Government of May 2, 2006 N 267) the following organizations participate in this process: Roshydromet, the Russian Academy of Sciences, Ministry of Agriculture of Russia, Federal Hydrometeorology and Environmental Monitoring Service, Ministry of Agriculture of Russia, the Ministry of Foreign Affairs of Russia, Ministry of Finance of Russia, MNR of Russia and Rosrybolovstvo (Federal agency on fisheries of the Ministry of Agriculture of Russia).

²¹ In 2001 “Draft articles on the Prevention of transboundary harm from hazardous activities», and in 2006 — “Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities” were adopted. Thus, the International law commission terminated the work which was carried out for almost 30 years (1978-2006). See more in detail: Solntsev A.M. International liability for the injurious consequences of acts not prohibited by international law // Collection of theses of the International scientific-practical conference “Prospects of development of the contemporary law in the context of internationalization”. Arkhangelsk, 2007.

lations in the Antarctic territories to which they previously laid corresponding claims. The Antarctic Treaty System is still a unique example of international cooperation. Having received the status of a natural reserve used in the peaceful and scientific purposes, Antarctica has become the arena of successful international cooperation.