



ISTITUTO DI STUDI GIURIDICI INTERNAZIONALI

9

# THE ANTARCTIC LEGAL SYSTEM

The protection of the environment  
of the polar regions

edited by  
Gianfranco Tamburelli



GIUFFRÈ EDITORE

# PERÚ AND THE ENVIRONMENTAL PROTECTION OF ANTARCTICA

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## 1. Introduction

Peruvian activities in Antarctica can be traced back to the colonial period, the first Peruvian team to reach Antarctica was the *Armada de la Mar del Sur* in 1603, directed by General Gabriel de Castilla, and the second was the *Real Armada San Telmo* in 1819, conducted by Brigadier Rosendo Polier, this vessel shipwrecked on one of the Shetland islands<sup>1</sup>.

After these missions there was a pause on the expeditions, there were only a small number of studies about the influence of polar currents in the Peruvian coast, among them can be mentioned: the study made by Luis Carranza in 1891, first president of the Geographical Society of Lima<sup>2</sup>, and the report about the rescue of the Norwegian explorer Otto Nordenskjöld.

After World War One, the interest for Antarctica increased in Argentina and Chile, and many expeditions were organized to validate the interest on the South American Quadrant of the Continent. Argentina and Chile manifested the theory of the geographical continuity to Antarctica. The defense of Antarctica corresponded to the *Inter American Treaty of Mutual Assistance*<sup>3</sup> (TIAR) signed in Río de Janeiro in 1947.

In 1959 the Washington Treaty on Antarctica was adopted<sup>4</sup>. Since then various acts

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<sup>1</sup> See ORTIZ-SOTELO, J., *Inicio del Interés Antártico Peruano*, in *Derroteros de la Mar del Sur* N. 13, Lima-2005, pp. 105-112.

<sup>2</sup> The *Sociedad Geográfica de Lima* is an institution founded by the President Andrés Avelino Cáceres in 1888, and has contributed to the development of scientific and academic research within the Peruvian society. [www.geolima.org](http://www.geolima.org)

<sup>3</sup> The *Inter American Treaty of Mutual Assistance (Tratado Inter Americano de Asistencia Recíproca)* also called Convention of Mutual Defense, signed in Río de Janeiro, September 2, 1947. The area covered by the Convention includes the Americas and 300 miles from the coast. To the north, the region between Alaska, Greenland, and the Arctic Zone. To the South, the Antarctic regions, San Peter and San Paul Island and Trinidad Island. Perú is a signing party since 1947. Among the other signing parties: [Argentina](#) and Chile (1947).

<sup>4</sup> The *Antarctic Treaty* (Washington, D.C., 15 October 1959) is the international compromise that was signed by 12 Countries in 1959; These 12 countries had at that time had Antarctic activities. This international treaty regulates the activities in the Antarctica. The Treaty is short, only 14 articles, but it has demonstrated to be a master piece for the solution of complex political and juridical problems that might arise

have been adopted and currently the *Antarctic Treaty System* is a notion which includes the 1959 Antarctic Treaty, the 1972 *Convention for the Conservation of Antarctic Seals* (CCAS-1972), the *Convention for the Conservation of Antarctic Marine Living Resources* (CCAMLR, 1980); the 1991 *Madrid Protocol on the Protection of the Antarctic Environment and Its Annexes*<sup>5</sup>; and the 2004 *Agreement on the Conservation of Albatrosses and Petrels* (ACAP),<sup>6</sup>.

Giving the importance of Antarctica for the Peruvian interest and the humanity, this article analyses the process of adherence to the *Antarctic Treaty*, to the *Madrid Protocol* and its Annexes and all the measures implemented in the Peruvian legislation in order to comply with the *Antarctic Treaty System*.

## **2. The Peruvian adhesion to the Antarctic Treaty**

In 1948 the Chilean President, Gonzales de Videla, inaugurated a new Chilean base in Antarctica. This case generated an acid response of Great Britain. The most important Peruvian journal *El Comercio* adhered to the Chilean position and published the present head note: “Any intent of Great Britain to claim sovereignty over a zone claimed by Chile will be considered an aggression to America”<sup>7</sup>. Argentina had the same problem with Great Britain and Australia, reaching an agreement in 1949<sup>8</sup>, where the three nations decided to keep a *modus vivendi* that consisted in the prohibition to have war ships south of the 60° parallel.

Among the Peruvians that manifested that Perú had the right to sovereignty over Antarctica was Gonzalo Fernandez Puyo, Peruvian diplomat, who based his position in the same arguments of Chile and Argentina<sup>9</sup>, and also based his theory on the expedition of Pedro Fernandez de Quiros in 1605, searching the *Australia of the Holly Spirit*. Puyo evidenced three possible solutions to solve the Antarctic problem: a plural condominium, the application of the theory of the polar sector, and a mix of both proposals, establishing a Peruvian and Chilean condominium for the sectors of the 77° and the 90° west longitude<sup>10</sup>.

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in the Continent. The Treaty enters into force in 1961. Perú adheres to the Treaty on April 10, 1981, and through Supreme Decree N. 09-83-RE, creates the *Comision Nacional de Asuntos Antárticos* (CONAAN), institution responsible of the Antarctic Activities (Secretary of Foreign affairs).

<sup>5</sup> See FRANCONI, F., *L'attuazione internazionale del Protocollo di Madrid*, in *L'Evoluzione del Sistema Antartico*, a cura di MARCHISIO, S., and TAMBURELLI, G., Milano, 2001, pp. 19-31.

<sup>6</sup> See MARCHISIO, S., *L'attuazione del Protocollo di Madrid nell'ordinamento italiano*, in *L'Evoluzione del Sistema Antartico*, a cura di MARCHISIO, S. and TAMBURELLI, G., Milano, 2001, p. 33-50, and, *The Implementation of the Madrid Protocol in the Italian Legal System*, in *The Antarctic System and Environmental Issues*, a cura di TAMBURELLI, G., Milano, 2006, pp. 147-162.

<sup>7</sup> “Cualquier intento por apoderarse de la zona reclamada por Chile será considerada como una agresión a America”, in *El Comercio*, 19/2/1948, p.9.

See TIAR, Article 3.1 “The Contracting Parties declare that in any armed attack against an American Nation, will be considered as an attack against all American States, and as a result, each of the Contracting Parties is obligated to help against the attack, exercising the right to the legitimate defense, individual or collectively”, as recognized Art. 51, Chapter VII - Action with Respect to Treaties to the Peace, Breaches of the Peace and Acts – of the Charter of the United Nations.

<sup>8</sup> *The Tripartite Naval Declaration*, see: SCHRAM STOKKE, O., and VIDAS, D., *Governing the Antarctic*, Cambridge University Press, England, 1996, p. 49. See also ORREGO-VICUNA, F., *Antarctic Conflict and International Cooperation*, p. 55 ss, in *Antarctic Treaty System: An Assessment*, National Academy Press, Washington D.C. 1986.

<sup>9</sup> Theory of the American geographical continuity to Antarctica.

<sup>10</sup> See ORTIZ-SOTELO, J., *Inicio del Interés Antártico Peruano*, in *Derroteros de la Mar del Sur* N.

Other examples of the Peruvian claim of Antarctic sovereignty are the positions of major Edmundo Rey Rivero, defending theory of the *Polar Projection*, 1950<sup>11</sup>, and Manuel Medina Paredes, who in 1957 disserted his undergraduate thesis, in the *Universidad Nacional Mayor de San Marcos*, on *Rights of Perú over Antarctica*. It is important to clarify that until this period there was not an official position of Perú over Antarctica.

In the middle of the twentieth century, as a result of a growing interest of the world in the Antarctic continent, and the approval of the *Antarctic Treaty*, some Peruvian diplomats and navy officers started to study the Antarctica. In 1961, the Peruvian Navy sent its officers to participate in scientific expeditions to Antarctica; these missions were from Argentina, Brazil, Chile<sup>12</sup>, Germany<sup>13</sup>, New Zealand and the United States of America.

During the declaration of the Constituent Assembly of May 3, 1979, was made public for the first time the Peruvian interest for Antarctica, which is considered, attached to Perú for geographical and ecological factors, and for history. Was also announced that Perú, without renouncing to its rights, will help to preserve Antarctica for the benefit of humanity, throughout the promotion of the rational and balanced exploitation of the natural resources of the Continent.

Perú has adhered to the Antarctic Treaty on April 10, 1981, through Presidential *Resolución Suprema*<sup>14</sup> N. 0424<sup>15</sup>, and approved, afterwards, by the Congress with *Resolución Legislativa*<sup>16</sup> N. 23307 on November 4, 1981.<sup>17</sup> Neither the Legislative Resolution nor the Supreme Resolution mentions any special measure to be taken in order to implement the Treaty<sup>18</sup>. By signing the Treaty, Perú, recognized that the Treaty is the only valid legal instrument, and also recognized the faculty of the Treaty to create international law over Antarctica; Perú also manifested that will follow its contents and will not reivindicade Antarctic territory.

The *Antarctic Treaty* was ratified following the old Constitution July 12, 1979<sup>19</sup>. The Peruvian President based his ratification on Art. 104<sup>20</sup> of the Constitution, allowing

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13, Lima, 2005, pp. 105-112.

<sup>11</sup> *Síntesis Monográfica del Antártico* (Lima, Servicio de Prensa, Propaganda y Publicaciones Militares, 1954).

<sup>12</sup> ORTIZ-SOTELO, Lieutenant Juan Soria, traveled to Antarctica with Chilean expedition (1961-1962).

<sup>13</sup> ORTIZ-SOTELO, The engineer Jorge Vasquez traveled with the German Expedition in the summer 1972-1973.

<sup>14</sup> The Peruvian President according to Art. 211 of the Peruvian Political Constitution of 1979 can emanate the *Resolución Suprema*; *Decretos legislativos* are emanated by the president, previous Congress delegation of faculties; *Decretos Supremos*: are the regular laws emanated by the president in the government activity.

<sup>15</sup> Supreme Resolution of the 09 and 13 of July, 1981, sent to the Congress by the President with docket Number. 3-0-Y/06

<sup>16</sup> The Peruvian Congress can emanate the following: *Resoluciones Legislativas and Leyes*. *Resolución Legislativa* (Legislative Resolution) is adopted by the Peruvian Congress, according to Art. 186 of the Peruvian Political Constitution of 1979.

<sup>17</sup> Secretary of Foreign Affairs of Perú, <http://www.rree.gob.pe/portal/Tratados.nsf>

<sup>18</sup> The adhesion to the Treaty was made during the XI Consultative Meeting in Buenos Aires.

<sup>19</sup> Constitution adopted under the Presidency of Fernando Belaunde Terry, after years of army governments.

<sup>20</sup> The President can, celebrate or ratify international treaties with foreign States or international organizations, or adhere to them without the prerequisite of the Congress approval. He has only to inform the Congress afterwards.

him to waive the prerequisite of the Congress approval, because the Treaty was a matter of presidential exclusive competence. This Article must be analyzed together with Art. 211, paragraph 14 of the Constitution, which confers the presidential prerogatives: “*To direct the foreign policy and the international relations, celebrate and ratify Treaties and Conventions, according to the Constitution*”. We can conclude that the *Antarctic Treaty* has followed all the steps provided for by the 1979 Constitution in order to be validly implemented to the Peruvian legislation, and became part of the national legislation, as Chapter V, Art. 101 enunciate: “*international treaties celebrated by Perú with other nations, become part of our national law*”.

Article 102 of the Peruvian Political Constitution establishes the prerequisite of the previous approval by the Congress<sup>21</sup> of all international treaties: “*all international treaties have to be approved by the Congress before the Presidential ratification*”. This article does not collide with the dispositions of Art. 104, because the ratification of the *Antarctic Treaty* was considered an exclusive prerogative of the President and did not contain any clause that went against the Peruvian legislation<sup>22</sup>.

After manifesting interest in Antarctica through the adhesion to the *Antarctic Treaty* and due to its expeditions to the White Continent, Peru has been named Consultative Party to the *Antarctic Treaty* on October 9, 1989.

### ***3. Some legal issues concerning the ratification of the Madrid Protocol on the Protection of the Antarctic Environment***

Peru adhered to the Madrid Protocol on December 14, 1992, through *Decreto Ley* N. 25950<sup>23</sup>; this Decreto ratifies the Protocol and its five annexes: Annex I: *Environmental Impact Assessment*, Annex II: *Conservation of Antarctic Flora and Fauna*, Annex III: *Waste Management Disposal*, Annex IV: *Marine Pollution*, Annex V: *Area Protection and Management*.

This *Decreto ley* enacted during the National Emergency and Reconstruction Government of Fujimori<sup>24</sup>, ratified the Madrid Protocol. The original aspect of this Decree is that copied the entire text of the Protocol and its Annexes<sup>25</sup>.

To analyze the legal value of the *Madrid Protocol* in Perú we have to consider that the *Decretos Leyes* in Perú are only enacted when there is a *de facto* Government, or during

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<sup>21</sup> Art. 102 of the 1979 Peruvian Constitution: “*All international treaties have to be approved by the Congress before the Presidential Ratification*”.

<sup>22</sup> Art. 103 of the Peruvian Constitution “*When the international treaty contains a disposition that goes against a constitutional law, in this case the treaty has to be approved with the same process as to reform the Constitution, before being ratified by the President*”. In this case the *Antarctic Treaty* did not contain any clause that went against the Peruvian international public order or against the Constitution.

<sup>23</sup> *Decreto Ley* is an act adopted by the Peruvian President during a *de facto* government or during emergency situations. It has the legal value of a law emanated by the executive, without the previous intervention or authorization of the Congress or the Parliament. In some democratic regimes, as Perú at that time. In el *Diario Oficial el Peruano* December 14, 1992.

<sup>24</sup> The Peruvian President Alberto Fujimori Fujimori, on April 5, 1992, dissolved the Senate and the Representative Chamber and established the *Gobierno de Emergencia y Reconstrucción Nacional*. Later creates a new Political Constitution Approved in 1993.

<sup>25</sup> This style of reproducing the entire text of the treaty was done during the Emergency and National Reconstruction of President *Fujimori (1992-1993)*. The majority of the treaties were approved with *Decretos Leyes* and the whole treaty was transcribed in the text.

emergency situations<sup>26</sup>. It is why this *Decreto Ley* does not have the approval of the Congress. Therefore, due of the political situation in Perú in 1992, all the treaties were ratified following this abbreviate procedure<sup>27</sup>, and did not followed what the Political Constitution of 1979 had established.

In 1993 President Alberto Fujimori enacted a new Constitution<sup>28</sup>. What is important to remark is that the 1993 Political Constitution includes a Declaration of the *Congreso Constituyente y Democrático*.<sup>29</sup> “ *Peru is a country of the Austral hemisphere, related to Antarctica by its coasts that project towards Antarctica, as well as for ecological factors, and historical precedents, and by the rights and obligations as Consultative Party to the Antarctic Treaty, Peru will propitiate the conservation of Antarctica as a peaceful area dedicated to the scientific research, and to the actuation of an international regime that, without losing the rights of our Nation, will promote in benefit of humanity, the rational and aequa exploitation the Antarctic natural resources and insure the protection and preservation of the ecosystem of this Continent*”.

#### **4. Implementation of the Madrid Protocol and its Annexes**

In 2005 the ATCM held Stockholm, June 14, 2005 was adopted Measure 1 (2005) of Annex VI to the Antarctic Protocol on Environment Protection on: “*Liability for Environmental Emergencies*”<sup>30</sup>, this Measure was approved by the Congress trough Legislative resolution 29055, of June 28, 2007 and afterwards ratified by the President<sup>31</sup> with Supreme Decree N. 042-2007-RE, July 11, 2007.

The ratification process was made according to art. 56<sup>32</sup> and art. 102, paragraph 3 of the new Peruvian Constitution of 1993<sup>33</sup> and Art. 2<sup>34</sup> of the Law 26646<sup>35</sup>. These articles settle the prerequisite of the approval of the treaties by the Congress prior to the presidential ratification and enumerates the following cases: 1. Human rights, 2. Sovereignty, or integrity of the territory, 3. National security, 4. Government budget,

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<sup>26</sup> Until now there are many constitutionalists in Perú that do not recognize the value of the laws created by the Government during this period (1990-2000), inclusively some declare that the 1993 Constitution should be changed for the old Constitution of 1979.

<sup>27</sup> All the Treaties ratified during the *National Emergency and Reconstruction Government*, as the Madrid Protocol, have all the validity in the internal legislation.

<sup>28</sup> The 1993 Constitution, is the actual Constitution of Perú.

<sup>29</sup> The President closed the Senate and the Representative Chamber, and created a Chamber Congress named el *Congreso Constituyente y Democrático*, (CCD). 1993.

<sup>30</sup> This Annex sets rules governing who is liable for preventing and dealing with environmental emergencies arising from scientific research, tourism and other activities in the Antarctic Treaty area, such as logistic (shipping and aircraft) support. The aim of the Annex is to stipulate before anything goes wrong, who would be held responsible for cleaning up after an environmental emergency, and the legal avenues to respond to disaster. It also allows compensation to be claimed from the polluter if someone else has to clean.

<sup>31</sup> Sent to the Congress trough Supreme Resolution N. 350-2006-RE.

<sup>32</sup> Article 56 of the Peruvian Political Constitution, treaties have to be approved by the Congress prior to the Presidential ratification, when involves the following matters: *a) Human Rights, b) Sovereignty, integrity of the territory, c) National Security, d) Government budget*. Have to be approved by the Congress, treaties that create, modify or abrogate taxes; those which require modifications or derogations of laws, or these which need special legislation for its execution.

<sup>33</sup> 1993 this Political Constitution replaces the 1979 Constitution.

<sup>34</sup> Article 102 paragraph 3 of the Peruvian Political Constitution 1993 establishes the attributions of the Congress: “*to approve treaties, according to the Constitution*”.

<sup>35</sup> Law 26647 *Ratification of the Peruvian Treaties*, June 26, 1996.

Treaties that create, modify or extinguish taxes; those that require modifications or abrogation of a law, and those that need special act of legislation for their implementation.

We can conclude that the ratification of the Annex VI to the Madrid Protocol is a case that fits with Article 56, paragraph 4 of the Constitution, because Annex VI needed a special act of legislation in order to be implemented by the Peruvian Government. Consequently, the ratification of the Annex complies with the internal legislation. Even though until now not all measures has been taken in order to implement the Annex. To demonstrate the legal value, we will make reference to the Law 26647, which establishes in Art. 2: “Treaties in matters that refer to Art. 56 have to be approved by the Congress, through Legislative Resolution, prior to the Presidential ratification, using a Supreme Decree”.

Peru started to follow the Protocol on Environmental Protection, valid since January 1998 and all Peruvian activities are described in a report on *environmental impact assessment* trying to create a guide to protect the Antarctic environment<sup>36</sup>. There have been many Peruvian activities in order to comply with the Madrid Protocol and its annexes (see the Information Paper on *Peruvian Activities bearing on Compliance with the Antarctic Treaty Protocol on Environmental Matters* (XXII ATCM/IP9), of April 1998.

The main environmental scientific activity is analyzed in the report: “*Evaluación ambiental inicial, mejoramiento operativo de la Estación Científica Antártica Machu Picchu, of November 2005*”<sup>37</sup>. This is a study of environmental assessment, of the best practices of the operation of the Antarctic Scientific Station *Machu Picchu*, this document has been elaborated following the normative of Annex I of the Madrid Protocol<sup>38</sup>. In order to develop scientific studies *in situ* Peru has established a Scientific Station, named *Machu Picchu* (ECAMP), located at *King George Island*, and it is used as a summer station, during the months of December and March. The infrastructure is composed of four modules: rooms, kitchen-dining room, force-and emergency room, and a heliport.

The activities projected in the station comprehend the installation of an incinerator<sup>39</sup> and a compacting machine, designed for the destruction of solid residues generated on ECAMP, make bigger the force house to hold a bigger team; the installation of a laboratory module. These last activities have been made on the sixteenth Peruvian Expedition on the Antarctic: ANTAR 16, December to February 2005-2006.

All the scientific activities have been and will be develop according to the Art. 8<sup>40</sup> of the *Madrid Protocol*, and taking in to account that those activities will be done on a reduced space. In this area has already been previous human activity; these activities are directed to preserve the Antarctic environment and study the possible negative impact. This is why it has been decided to realize an initial environmental impact assessment study<sup>41</sup>.

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<sup>36</sup> See: Peruvian Activities bearing on Compliance with the Antarctic Treaty Protocol on Environmental Matters, presented on (XXII ATCM/IP9) held in Tromso, April 1998.

<sup>37</sup> Document elaborated by the *Instituto Nacional Antártico Peruano* INAMPE, November 2005

<sup>38</sup> *The Implementation of the Madrid Protocol in the Italian Legal System*, in *The Antarctic System and Environmental Issues*, a cura di TAMBURELLI, G., Milano, 2006, pp. 147-162.

<sup>39</sup> Incinerator installed during ANTAR XVII, December 27, 2006.

<sup>40</sup> See WATTS, A., *International Law and the Antarctic Treaty System*, Grotius, Cambridge 1992, p. 411.

<sup>41</sup> See VIDAS, D., “The Protocol on Environmental Protection to the Antarctic Treaty: A Ten-Year Review”, in Olav SCHRAM STOKKE and Øystein B. THOMMESSEN (eds.), *Yearbook of International Cooperation on Environment and Development* (London: Earthscan Publications 2002/2003), 51–6.

The activities are made on: *Ensenada Mackellar* of *King George Island*, one of the *Sethland* island on the South of the Antarctic Bay, with the following coordinates: 62°05.5' Latitude and 58°28.5 longitude west<sup>42</sup>.

### **5. Public entities created by the Peruvian Government**

Following the ratification of the *Antarctic Treaty*, two institutions have been created by the Peruvian government to coordinate the Antarctic activities, first the National Commission of Antarctic Matters (*Comisión Nacional de Asuntos Antárticos - CONAAN*), in 1983, and the second that replaced the former: the Peruvian Antarctic Institute (*Instituto Antártico Peruano - INANPE*), in 2002.

The CONAAN<sup>43</sup> was created on July 11, 1983 by Supreme Decree 9-83-RE, as the institution dedicated to formulate the National Policy on Antarctica. The CONAAN was a multilateral forum of coordination for the study and analysis of the legal, political, economic, and scientific presence of Peru in Antarctica, CONAAN had also advised the government on the formulation and execution of the National Antarctic Policy as well as its implementation. CONAAN<sup>44</sup> has elaborated the Antarctic National Program, based on the National Antarctic Policy. The President and the Executive Secretary were officers of the Secretary of Foreign Affairs. CONAAN was divided in two sub commissions, one scientific and one logistic.

After 19 years of work, CONAAN proposed the National Antarctic Policy, which was adopted by the government by Supreme Decree N. 016-2002-RE of February 28, 2002<sup>45</sup>. Subsequently CONAAN presented to the Executive a law proposal to create the *Instituto Antártico Peruano*, in order to have an institution dedicated exclusively to safeguard the Peruvian interests in Antarctica. The 20<sup>th</sup> of November, 2002 was published, the Law 27870<sup>46</sup>. This Law restructures the CONAAN and creates el *Instituto Antártico Peruano* (INANPE), as a decentralized institution, as a legal person of public law, with scientific, technical, functional, economical and administrative autonomy, depending of the Secretary of Foreign Affairs.

Since the enactment of the Law 27870 the Peruvian Antarctic Institute is the entity encharged to formulate, coordinate, direct and supervise in an integral manner the National Antarctic Policy, policy that is the leading document that guides the public and private activities in Antarctica<sup>47</sup>.

Among the objectives of the INANPE we can name the following: *a)* Promote the active participation of Peru in Antarctica; *b)* Preserve the use of Antarctica for peaceful purposes only; *c)* Contribute with the International Community to preserve the Antarctic Environment; *d)* Stimulate the Antarctic scientific research in order to contribute to the national development; *e)* Encourage the Antarctic knowledge, working together with universities, research centers and others; *f)* Promote the international cooperation with the

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<sup>42</sup> See: *Evaluación Ambiental Inicial del Mejoramiento Operativo de la Estación Científica Antártica Machu Picchu, INAMPE – 2005.*

<sup>43</sup> Secretary of Foreign Affairs.

<sup>44</sup> The President and The Executive Secretary were officers of the Secretary of Foreign Affairs. CONAAN was divided in two sub commissions, one scientific and one logistic.

<sup>45</sup> The National Antarctic Policy, approved by Supreme Decree 016-2002-RE.

<sup>46</sup> Law N. 27870, *Ley del Instituto Antártico Peruano – INANPE*, in the Official Reporter of Perú “*El Peruano*” November 20, 2002.

<sup>47</sup> Arts. 1-2 of the Law N. 27870, *Ley del Instituto Antártico Peruano – INANPE.*



Countries that are part of the Antarctic Treaty, with countries with common interest in the area, and with International Organizations<sup>48</sup>.

The Law 27870 establishes the following functions for INAMPE<sup>49</sup>: *a)* To formulate, direct, evaluate the Antarctic National Policy<sup>50</sup>; *b)* Formulate and actuate the Antarctic National Plan; *c)* Promote, coordinate, organize and direct scientific and logistic activities considered in the Antarctic National Plan, taking into consideration the laws about Antarctic environmental protection and its associated and dependant ecosystems; *d)* Administrate and maintain the scientific stations, and facilities that Peru might establish in the Antarctic Continent; *e)* Recommend, when necessary, the implementation of laws to carry out the Antarctic National Policy; *f)* Authorize the Antarctic activities proposed by public and private entities, verifying the concordance with the National Antarctic Policy; *g)* Elaborate the annual budget for the normal development of the Commission; *h)* Encourage on a national level the Antarctic knowledge; *i)* Establish and maintain institutional relations with institutions of other Nations; *j)* Administrate the resources that the government confers to finance its activities, and administrate its own resources or donations, as well as create foundations for the sustainability of the Antarctic activities; *k)* Obtain technical, logistic, and financial assistance trough international cooperation, that will permit the adequate development of the Antarctic Plan.

#### **6. Peruvian National Antarctic Plan, Programs and Research Activities**

Due to the work of INANPE, and to its prerogatives established on the National Antarctic Plan<sup>51</sup>, on February 27, 2002 through Supreme Decree 016-2002-RE, the Peruvian National Antarctic Policy was established. The main reason of this Decree was to settle the objectives for the Antarctic Plan. The two basic objectives are: the consolidation of the active and permanent presence of Peru in Antarctica and to continue as Consultative Party of the Antarctic Treaty.

The main aspects of the policy are: *a)* Adequate and improve the public institutions in Antarctic matters, to the developments of this decade; *b)* Promote the participation of the public institutions and the civil society. Promote the diffusion of the importance of the Antarctica for Peru, and the formation of a national Antarctic mentality; *c)* Promote the research, with international standards, oriented to the new trends in the world; *d)* Have an adequate infrastructure and equipment to make possible the permanent presence of Peru in Antarctica for scientific activities.

*Research Programs:* Peru develops diverse Antarctic scientific activities. The most important activities in Antarctica are named ANTAR, and according with the National Policy, Peru has concluded seventeen scientific research missions to this region in the period between 1988 and 2007<sup>52</sup>.

ANTAR missions involve the following line of investigation: *a)* *Ocean Sciences:*

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<sup>48</sup> See Art. 4 of the Law 27870. See Also the Law 28611 *General Environment Law*, October 12, 2005. This law does not make mention explicitly to Antarctica but all related articles can be applied.

<sup>49</sup> INANPE is structured as follows: *a)* Directive Committee, *b)* Committee of Scientific Advisors, *c)* Executive Secretariat *d)* Direction of Science and Environment, and *e)* Direction of Operations.

<sup>50</sup> The Peruvian National Antarctic Policy was established by Supreme Decree 016-2002-RE, February 27, 2002.

<sup>51</sup> See the institutive law (27870),

<sup>52</sup> The last Peruvian Mission to Antarctica, ANTAR XVII (2007) made research in four scientific fields: *Marine Biology, Environment, Climate Change, and Ozone Layer*. [www.surnoticias.com](http://www.surnoticias.com)

Oceanography, Hydrography, Marine Biology, Retrospective analysis of the species in time; b). *Earth Sciences*: Glaciology, Mass Balance, Antarctic Paleontology, Paleontological climate, Hydrology, Magnetism, Geodesy; c) *Atmosphere Sciences and Space studies*: Meteorology and weather in Antarctica, Polar Astronomy, Climate Change, Antarctic Astronomy; d) *Environment*: Environmental impact assessment of the different kinds of life and projects. Permanent environmental surveillance, Environmental administration, and Environmental sensibilization; e) *life Science*: Human Science, Earth Biodiversity; f) *Engineering and Technology*: Data base of geographical information, Satellite technology application on research fields, Alternative energy use.

The last Peruvian missions to Antarctica aimed four of the six fields determined for the research: *Ocean Science*; *Earth Science*; *Atmospheric Space*; and *Environment*. Relating the activities concerning the environment, there has been a valuable amount of work in order to comply with the *Madrid Protocol*<sup>53</sup>.

In order to facilitate the research, Peru has a vessel that dedicates exclusively to scientific research. The vessel name is “*Buque de Investigación Científica HUMBOLDT*”, and has participated on most of the Peruvian Antarctic expeditions, helping enormously in the logistic and scientific work. The BIC HUMBOLDT makes an annual trip to Antarctica transporting national and foreign scientist, researchers, and personal with the task of the logistic work, in order to keep and rehabilitate the *Machu Picchu* station, graduating university students and international journalists<sup>54</sup>. The total trip takes 15 days. This ship has the main mission to preserve the Antarctic environment and to comply with the *Madrid Protocol*, on garbage disposal. The vessel can also serve as a search and rescue ship in emergency situations<sup>55</sup>.

## 7. *The National Antarctic Policy*

The Environmental Protection of the Antarctic Environment is the Objective 2 of the National Antarctic Policy, this objective is based on the Supreme Decree 016-2002-RE, of February 12, 2002<sup>56</sup>. In order to follow this objective, the policy gives us the following directives: a) consider the Antarctic environmental protection and its ecosystems, independent and associated, as the main aspect on the planning of the Antarctic activities. b) develop studies that will help understand the influence of the ecological and climate process in Antarctica. c) keep a vigilant aptitude for any intent of the establishment of an exploitation regime of Antarctic minerals. d) propitiate the permanent presence of

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<sup>53</sup> ANTAR XV (2003- 2004). *Ocean Science*: Hydro-Oceanographic Project, its objective was to monitor the ocean conditions, in order to enrich the data base, and to have better comprehension of the behavior of the main characteristics of the ocean, ocean currents, temperature, and salinity of MacKellar. *Earth Science*: Glaciology Project, carried out with the University of Masaryk, the main objective is to determine the movement of the glacier zone in Antarctica. *Atmospheric Space*: Meteorological data has been taken with the intention to create a data bank, in order to establish mathematical forecasts of the weather in Antarctica.

<sup>54</sup> The BIC HUMBOLDT departs from the *Base Naval del Callao (Lima-Perú)*, stops for technical reasons in the harbors of *Valparaiso and Punta Arenas (Chile)*, afterwards goes directly to King George Island on Antarctica.

<sup>55</sup> *Ship for scientific research* –Driver: Navy Industrial Service (SIMA PERU). – Year of Construction: 1979. - Measure: 76.20 mts. - Speed: 14 Nods. - Capacity: 100 persons - Classification: Germanischer Lloyd – Research fishing ship - Helmet: reinforced front to navigate in Antarctic waters. INANPE.

<sup>56</sup> Supreme Decree 016-2002-RE, February 2002, Peruvian National Antarctic Policy.

environmental development on marine living resources in Antarctica and insure its protection.

The National Antarctic Policy establishes strategies for each policy; among them we will mention the more relevant: *a)* Incentive the total actuation of the Antarctic and its annexes, because of the value of the Antarctic as habitat for wild life, pristine state, extraordinary beauty value and as area for scientific research. *b)* Develop an active participation on the *Environmental Protection Committee* (CEP). *c)* Incentive national researchers to develop and participate on international researches on climate change on Antarctica. *d)* Keep the prohibition on all exploitation activities of mineral resources of Antarctica, for environmental reasons and for the protection of the national economy. *e)* Contribute and collaborate with the activities of the *Commission for the Conservation of Antarctic Marine Resources*. (CCMLR).

#### **8. *International Cooperation and Peruvian Participation to the Antarctic Treaty Consultative Meeting***

Peru has signed cooperation agreements in Antarctic matters with Germany, about scientific and logistic cooperation with CONAAN in March, 2002; in 2002 there was an agreement with New Zealand, for ANTAR XIII e XIV; the Czech Republic signed an agreement for the Antarctic research for ANTAR XV, March 4, 2002; with South Korea was signed an agreement about Krill research in 1996. India and Peru concluded an agreement about Antarctic interchange of Antarctic Scientist in May, 1997. China collaborated with Peru on Scientific matters, logistics and technology in a project about biodiversity, this project received the name of “*The Great Wall*”, in November, 2002. among the agreements signed with Latin American countries we can mention the following: the agreement signed with Argentina, about scientific, logistic and environmental matters in 2001; with Uruguay, for the scientific and logistic collaboration in Antarctic matters, in May 1998; with Ecuador, on research and technology projects on Antarctica; with Chile for logistic support on the scientific missions, in august 1996; with Canada in 2003.

In order to analyze the Peruvian research in Antarctic matters we have studied the participation of Peru to the Antarctic Treaty Consultative Meetings through the Information Papers presented to the ATCM meetings to the Antarctic Secretariat, starting from the XXIII ATCM held in Lima-Peru (1999)<sup>57</sup>. This is the year where most information documents have been presented by Peru to the ATCM. Among the studies made by Peru we can mention the information papers that contain these studies, for example the Fauna and Flora Report of ANTAR IX and X, in compliance with Annex II to the Madrid

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<sup>57</sup> XXIII ATCM held in Lima-Perú from May 24 to June 4, 1999, were presented the following Information Papers:

*a)* Measures on Response on Environmental Emergencies and Contingency Plans formulated for Scientific Station “Machu Picchu.”; *b)* Fauna and Flora information of ANTAR IX y X of Perú.; *c)* Preliminary Report about Meteorology aspects – Austral Summer 1998 / 1999; *d)* Environmental Radioactivity in the Peruvian Antarctic Scientific Station “Machu Picchu.”; *e)* Information about the Program of Marine Sciences of Peru, during the Austral Summer.; *f)* Preliminary Report of Physic and Dynamic Oceanography in Bransfield bay - Austral Summer 1998 – 1999.; *g)* Preliminary Report on Human Biology Austral Summer 1998/1999.; *h)* Information about the Program developed by Perú about Environmental Protection in Antarctica during the Austral Summer 1999. *i)* X Scientific Expedition – Perú ANTAR X Austral Summer 1998 – 1999; *j)* XI Peruvian Scientific Antarctic Expedition – Perú ANTAR XI; *k).* Antarctica: Educational Permanent Subject since 1999. l. Opening Brief of the Ambassador Urrutia Chief of the Peruvian Delegation to the XXIII Consultative Meeting of the Antarctic Treaty.

Protocol. The Information Paper regarding the Program developed by Peru about Environmental Protection in Antarctica during the Austral Summer 1999, in compliance to the Annex me and V to the Madrid Protocol.

At the XXIV ATCM held in San Petersburg<sup>58</sup> (9-20 July 2001), the most important document presented was the Annual Report according to Art. 17 of the Madrid Protocol for the period 2000-2001. At the XXV [ATCM - CEP V](#), Warsaw 10 - 20 September 2002<sup>59</sup>. Peru informed about the Thirteenth Scientific Mission to Antarctica, and that was implemented the Research Program, elaborated by the National Council of Science and Technology (CONCITEC)<sup>60</sup>, named “PROANTARCYT 2002-2007, that involved scientific projects, independent and systematic, for a period of five years. In the XXVI [ATCM - CEP VI](#) held in Madrid, (June 9 – 20, 2003), Perú presented the Annual Report on the Antarctic activities for the period 2002-2003<sup>61</sup>. At the XXVII [ATCM - CEP VII](#), held in Cape Town, from May to June 4, 2004<sup>62</sup>, was presented the amendments to the rules of the proceeding of the Consultative Meetings to the Antarctic Treaty (RCTA). Peru also informed about the main activities in Antarctica during the summer 2003-2004, in compliance with Article III of the Antarctic Treaty, about the information exchange. INANPE declares that all the activities have developed taking in to consideration the Antarctic Protocol on Environmental Protection and its Annexes. At the XXVIII [ATCM - CEP VIII](#), held in Stocolm from June 6 – 17, 2005<sup>63</sup>. Was presented a proposal in order to amend the rules of Procedure (2004); this proposal was presented together with Australia, Germany, Japan, United Kingdom and United States. In the XXIX ATCM - CEP IX, held in Edinburgh: from June 12 to the 23<sup>rd</sup>, 2006<sup>64</sup> was presented together with Brazil, United and United States a detailed Management Plan of a Specially Managed Area, the plan complies with the five annexes to the Madrid Protocol and makes historical reference of the scientific activities during the last 30 years. XXX ATCM – CEP X, held in New Delhi<sup>65</sup>, April 30 to May 11, 2007<sup>66</sup> where the most important document is the information paper

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<sup>58</sup> Were presented the following documents: *Report on the organization of the XXIII ATCM in Lima May 24- June 4, 1999. Report on the Activities developed in Antarctica for the period 2000-2001, The Annual Report according to Art. 17 of the Madrid Protocol for the period 2000-2001.*

<sup>59</sup> Most Important Activities carried out by Perú on Antarctic Matters for the period 2001 – 2002

<sup>60</sup> CONCITEC, *Consejo Nacional de Ciencia, Tecnología e Innovación Tecnológica*, Is the Peruvian public institution that carries out the main research plans of the Nation. <http://concytec.gob.pe>

<sup>61</sup> See: Final Report of the XXVI Antarctic Consultative Meeting, Madrid, Spain, 9/20. June.2003.

<sup>62</sup> a) *Most Important Activities carried out by Perú on Antarctic Matters for the period 2003-2004*; b) Amendments to the Procedural Rules of the Consultative Meetings to the Antarctic Treaty.

<sup>63</sup> *Proposed amendments to the Rules of Procedure (2004).*

<sup>64</sup> *Review of the Admiralty Bay Antarctic Specially Managed Area Management Plan (ASMA No 1).*

<sup>65</sup> XXX ATCM, 30 April-11 May 2007, New Delhi, 5 documents. XXIX ATCM, 12-23 June 2006, Edinburgh, 2 documents. XXVIII ATCM, 6-17 June 2005, Stockholm, 1document. XXVII ATCM, 24 May-4 June 2004, Cape Town, 2 documents. XXVI ATCM, 9-20 June 2003, Madrid, 1 document. XXV ATCM, 10-20 September 2002, Warsaw, 2 documents. XXIV ATCM, 9-20 July 2001. St. Petersburg, 2 documents. XXIII ATCM, 24 May-4June 1999, Lima, 12 documents.

<sup>66</sup> The Information Papers presented in this meeting were the following:

a) Federal Ministry for the Environment Nature Conservation and Nuclear Safety, Berlin, Germany, This Information Paper presented by Belgium, France, Holland, Perú, Russia, UK and Ukraine. In this workshop the topics were the following: a) *National procedures for assessing and / or authorizing activities in Antarctica*; b) *Implementation of ATCM measures, resolutions and decisions, e.g. site-specific guidelines, etc., at the national level*; c) *Co-ordination of the assessment and / or authorizing process with respect to*

where Peru informs to the ATCM that will ratify Measure I to the Annex VI to the Madrid Protocol on Liability for Environmental Emergencies<sup>67</sup>.

## 9. Conclusions

The Peruvian national provisions that ratify the Antarctic Treaty, the Madrid Protocol and its Annexes, do not specify, neither integrate the Treaty rules, nor define the general legal concepts or provide a competent authority for issuing norms of a lower level, as regulations to implement these provisions. The Peruvian legislation only limits to approve the *Antarctic Treaty*, the *Madrid Protocol* and its five Annexes or Annex VI, limiting to mention the articles of the Political Constitutions that confer the power to the President or the Congress in order to approve or ratify the Treaty.

Analyzing the *General Environment Law*<sup>68</sup>, the *Frame Law of the National Environmental Management*<sup>69</sup> and its *By-Laws*<sup>70</sup>, we can conclude that none of these laws take in to consideration Antarctica. Giving that these laws are relatively new; they should include Antarctica as one of the sub chapters, moreover taking into account that the new Political Constitution of 1993 contains the *Antarctic declaration*.

In order to consolidate the active and permanent presence of Peru in Antarctica, the Peruvian government has to promote the research in Antarctic matters, encouraging universities, professors and researchers to investigate and to study in foreign Universities and in specialized Research Institutes. This labor has to be done in a partnership with INANPE, CONCYTEC and the Peruvian Universities in order to create a net of international partners, with the purpose of having international assistance in the research programs.

Peru in order to continue as a Consultative Party to the Treaty has to maintain the scientific missions to Antarctica (ANTAR) and comply with all the *Antarctic Treaty System* Legislation.

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*multilateral activities, e.g. in case of Article 8 (4) of the Environmental Protocol, etc.; Assessment of hydro acoustic and seismic activities / categorization according to the provisions of the Environmental Protocol.*

b) Admiralty Bay Antarctic Specially Managed Area (ASMA No. 1) Management Group Report, presented with Brazil, Ecuador, Perú, Poland, United States.

c) Scientific Research Period 2006-2007 (Summer Season)

d) Annual Report of Perú according to Art. 17 of the *Madrid Protocol*.

e) A Monitoring Program for the Admiralty Bay Antarctic Specially Managed Area (ASMA N° 1)

<sup>67</sup> Ratified on July 2004 by Supreme Decree N. 042-2007-RE, and the Law 26647.

<sup>68</sup> Law 28611 *General Environment Law*, October 12, 2005

<sup>69</sup> Law 28245 *Frame Law of the National Environmental Management*, June 08, 2004

<sup>70</sup> Supreme Decree 008-2005-PCM, *By-Law* of the Law 28245 “*Frame Law of the National Environmental Management*. January 28, 2005”

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