The Future of the Antarctic Treaty System

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THE SUSTAINABILITY OF THE ANTARCTIC TREATY SYSTEM: BIOLOGICAL AND NATURAL RESOURCE EXTRACTION

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Background to the Antarctic Treaty System

Antarctica, the world's southernmost landmass spans 14.2 million square kilometres of which only 0.18 percent of this continent is ice free.[1] The Antarctic Treaty System (ATS) is a set of documents which aim to ensure continued peace in the Antarctic, to encourage scientific co-operation, and preserve its unique natural environment.[2] The ATS comprises of the Antarctic Treaty, the Protocol on Environmental Protection to the Antarctic Treaty (also known as the Madrid Protocol), the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), the Convention for the Conservation of Antarctic Seals (CCAS) and the Secretariat of the Antarctic Treaty regulations.[3] The Antarctic Treaty was agreed upon in 1959 and came into effect in 1961.[4] It was initially signed by the twelve countries who had a presence in Antarctica and 54 other countries are parties to the ATS.[5] In 2048, signatories are allowed to propose changes to the ATS with consensus from all Consultative Parties.[6] Currently, there are over 100 facilities in Antarctica including 40 year-round stations and 36 seasonal stations, supporting the research of the 30 countries that operate in the region.[7]

In this report, I will examine trends such as ocean management and conservation, and competition for natural resources which have the potential to destabilise the ATS. I will predict how the ATS will respond to these challenges between 2021 and 2041, assuming a

[1] Kevin Hughes et al., "Antarctic environmental protection: Strengthening the links between science and governance," *Environmental Science and Policy* 83 (2018): 87; James Rogers, Andrew Foxall, and Matthew Henderson, "Chile and the Southern Hemisphere: Antarctica in Transition?" *AthenaLab,* accessed June 22, 2021. https://athenalab.org/wp-content/uploads/2020/09/Chile-and-southern-hemisphere-Antarctic-in-transition-ENG.pdf, 12.
[2] "The Antarctic Treaty," Secretariat of the Antarctic Treaty, accessed June 23, 2021, https://www.ats.aq/e/antarctictreaty.html; Kevin Hughes et al., "Antarctic environmental protection: Strengthening the links between science and governance," *Environmental Science and Policy* 83 (2018): 86; James Rogers, Andrew Foxall, and Matthew Henderson, "Chile and the Southern Hemisphere: Antarctica in Transition?" *AthenaLab,* accessed June 22, 2021. https://athenalab.org/wp-content/uploads/2020/09/Chile-and-southern-hemisphere-Antarctic-in-transition-ENG.pdf, 21.
[3] "Key documents of the Antarctic Treaty System," Secretariat of the Antarctic Treaty, accessed June 23, 2021, https://www.ats.aq/e/key-documents.html
[4] "Parties," Secretariat of the Antarctic Treaty, accessed June 23, 2021, https://www.ats.aq/devAS/Parties?lang=e
[5] "The Antarctic Treaty," Secretariat of the Antarctic Treaty, accessed June 23, 2021, https://www.ats.aq/e/antarctictreaty.html
[6] "The Protocol on Environmental Protection to the Antarctic Treaty," Secretariat of the Antarctic Treaty, accessed June 24 2021, https://www.ats.aq/e/protocol.html
[7] Kevin Hughes et al., "Antarctic environmental protection: Strengthening the links between science and governance," 88.

temperature increase of 1.5 degree Celsius, as per the prediction of Intergovernmental Panel on Climate Change.[8]

Territorial Claims

Argentina, Australia, Chile, France, New Zealand, Norway, and the United Kingdom have all claimed territory in Antarctica.[9] There are contested territorial claims within Antarctica, as the Chile, Argentina and the UK territorial claims overlap and there is also a section of Antarctica that has not been claimed.[10] Other countries who do not have territorial claims, however, do not recognise any existing claims to the continent.[11]

Non-territorial Claimants Operating in Antarctica

The United States of America, Russia, Brazil and China are engaged in Antarctic activity but have not claimed territory.[12] Article II of the Antarctic Treaty protects "freedom of scientific investigation in Antarctica and cooperation toward that end … shall continue" and Article III indicates that scientific research "shall be exchanged and made freely available".[13] As a result, non-claimant countries such as Russia and the United States of America are free to conduct scientific research in Antarctica.

Ocean Management and Conservation

For the past 200 years, commercial exploitation of marine life in the Southern Ocean, including seals, whales, and fish, has been rampant and still continues to this day.[14] Additionally, human activity causes extensive damage to Antarctic freshwater and ocean environments through pollution, habitat destruction, and overfishing.[15] To try to preserve the unique ocean environment, the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) governs the region south of 60° latitude, which includes the Southern Ocean, along with the 10,000 marine animals in it.[16] The CAMLR Convention was

[8] "Special Report: Global Warming of 1.5 °C," The Intergovernmental Panel on Climate Change, accessed June 30, 2021, https://www.ipcc.ch/sr15/
[9] "The Antarctic Treaty," Secretariat of the Antarctic Treaty, accessed June 23, 2021, https://www.ats.aq/e/antarctictreaty.html
[10] "Antarctic Territorial Claims," Department of Agriculture, Water and the Environment, accessed June 26 2021, https://www.antarctica.gov.au/about-antarctica/law-and-treaty/history/antarctic-territorial-claims/
[11] "The Antarctic Treaty," Secretariat of the Antarctic Treaty, accessed June 23, 2021, https://www.ats.aq/e/antarctictreaty.html
[12] James Rogers, Andrew Foxall, and Matthew Henderson, "Chile and the Southern Hemisphere: Antarctica in Transition?" *AthenaLab,* accessed June 22, 2021. https://athenalab.org/wp-content/uploads/2020/09/Chile-and-southern-hemisphere-Antarctic-in-transition-ENG.pdf, 36.
[13] "The Antarctic Treaty," Secretariat of the Antarctic Treaty, accessed June 23, 2021, https://www.ats.aq/e/antarctictreaty.html
[14] Kevin Hughes et al., "Antarctic environmental protection: Strengthening the links between science and governance," 88.
[15] Kevin Hughes et al., "Antarctic environmental protection: Strengthening the links between science and governance," 88.
[16] "CAMLR Convention text." Commission for the Conservation of Antarctic Marine Living Resources, last modified November 25, 2013, https://www.ccamlr.org/en/organisation/camlr-convention-text; Natasha B. Gardiner, "Marine protected areas in the Southern Ocean: Is the Antarctic Treaty System

ratified in 1982 due to overfishing, specifically of krill and it is the Scientific Committee (SC-CAMLR) established by this convention who provides scientific research used to inform conservation efforts.[17] Article II (2) of the CAMLR Convention includes "rational use" in conservation practices.[18] As the convention does not expand on this concept, it has been used to justify actions on the basis of state interests in the Southern Ocean.[19]

Conservation or Increased Extraction of Resources

There are tensions between countries who have become interested in increased conservation of the Antarctic marine environment and those pushing for increased extraction of biological resources, including krill and fish. Krill is one of the most important species in the Southern Ocean, providing nutrients to animals such as whales, penguins, seabirds, and fish, however, there are limited areas where krill are able to thrive in this region.[20] Krill fishing has been steadily increasing since 1993.[21] Of the total krill caught in the Southern Ocean, Norway accounts for over half and countries such as Korea, China, Japan, Chile, Poland, Russia, and the Ukraine account for the rest of the krill taken.[22] Both China and Russia are pushing for increased krill fishing limits and extended fishing zones.[23] China has commission the "the world's largest krill trawler" which will be finished by 2023.[24] This is a strong indication that China has no plans to scale back their krill fishing operations. Bjørn Krafft, from the Institute of Marine Research in Norway, has led a team researching the viability of increasing krill fishing in the Southern Ocean and is confident that demand for krill, which is high in protein, will only increase.[25] Both China and Norway are looking to pursue their own interests in the Southern Ocean, rather than focussing on conservation, as outlined in the CAMLR Convention.

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ready to co-exist with a new United Nations instrument for areas beyond national jurisdiction?" *Marine Policy* 122 (2020).

[17] Natasha B. Gardiner, "Marine protected areas in the Southern Ocean: Is the Antarctic Treaty System ready to co-exist with a new United Nations instrument for areas beyond national jurisdiction?" *Marine Policy* 122 (2020): 2; Kevin Hughes et al., "Antarctic environmental protection: Strengthening the links between science and governance," 88.

[18] "CAMLR Convention text." Commission for the Conservation of Antarctic Marine Living Resources, last modified November 25, 2013, https://www.ccamlr.org/en/organisation/camlr-convention-text

[19] Natasha B. Gardiner, "Marine protected areas in the Southern Ocean: Is the Antarctic Treaty System ready to co-exist with a new United Nations instrument for areas beyond national jurisdiction?" 2.

[20] Eugene J. Murphy et al, "Restricted regions of enhanced growth of Antarctic krill in the circumpolar Southern Ocean," *Scientific Reports* 7 (2017): 1; "Krill – biology, ecology and fishing," Commission for the Conservation of Antarctic Marine Living Resources, accessed July 5, 2021, https://www.ccamlr.org/en/fisheries/krill-%E2%80%93-biology-ecology-and-fishing

[21] "Krill fisheries," Commission for the Conservation of Antarctic Marine Living Resources, accessed July 5, 2021, https://www.ccamlr.org/en/fisheries/krill-fisheries

[22] "Krill Matters," Department of Agriculture, Water and the Environment, accessed July 6, 2021, https://www.antarctica.gov.au/news/explore-antarctica/krill/

[23] James Rogers, Andrew Foxall, and Matthew Henderson, "Chile and the Southern Hemisphere: Antarctica in Transition?" *AthenaLab,* accessed June 22, 2021. https://athenalab.org/wp-content/uploads/2020/09/Chile-and-southern-hemisphere-Antarctic-in-transition-ENG.pdf, 38.

[24] James Rogers, Andrew Foxall, and Matthew Henderson, "Chile and the Southern Hemisphere: Antarctica in Transition?" 38.

[25] Gerard Taylor, "Potential great for Norwegian krill fishing in Antarctic," *Norway Today,* April 1, 2019, https://norwaytoday.info/finance/potential-great-for-norwegian-krill-fishing-in-antarctic/

Conservation and Ocean Management in 2041

By 2041, Norway has increased their krill fishing in the Southern Ocean in line with their research findings and increased demand for protein rich foods for aquaculture industries.[26] China, too, has continued the exploitation of krill, facilitated by the krill trawler it acquired in 2023.[27] Increased krill fishing, together with the effects of climate change, including ocean warming, loss of sea ice, and increased ocean acidity, has caused a reduction in krill numbers.[28] In places such as the sub-Antarctic island of South Georgia, a popular breeding area for many seabirds, this has created scarcity of food resources and a subsequent decline in the number of these birds.[29] As a result, not only have krill numbers declined, but many other marine animals such as whales and seabirds have declined alongside them.
The tensions which existed between countries when krill were relatively abundant in the Southern Ocean have been exacerbated by their decline and the knock-on effect this has had for other marine life in the region. As the disruption of the eco-system is clear, signatories have attempted to increase conservation measures for marine life in the form of a new treaty. This process exacerbates tensions between those countries who would like stronger conservation measures put in place and those who would prefer to expand fishing practices. Countries have continued to use the "rational use" article in the CALMR Convention to justify their own self-interested actions, exacerbated by the scarcity of resources.[30] As a result of the lack of an institutional legal mechanism to enforce the ATS and the lack of clear limits on biological resource extraction, the ATS is not an effective set of treaties to protect the ocean environment when resources become scarce and states put their own interests first.

Competition for Natural Resources

Mineral resource extraction in Antarctica is banned under Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty, which states that "any activity relating to mineral resources, other than scientific research, shall be prohibited".[31] There is a concern that scientific research could be a pretext for mineral extraction as the data collected for scientific purposes could be useful when extracting minerals.[32] Hydrocarbons, the main components of oil and natural gas, have been found in the Ross Sea which has been estimated to amount to "50 billion barrels of oil and more than 100 trillion cubic metres of

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[26] Gerard Taylor, "Potential great for Norwegian krill fishing in Antarctic," https://norwaytoday.info/finance/potential-great-for-norwegian-krill-fishing-in-antarctic/
[27] James Rogers, Andrew Foxall, and Matthew Henderson, "Chile and the Southern Hemisphere: Antarctica in Transition?" 38.
[28] Eugene J. Murphy et al, "Restricted regions of enhanced growth of Antarctic krill in the circumpolar Southern Ocean," 1.
"Krill Matters," Department of Agriculture, Water and the Environment, accessed July 6, 2021, https://www.antarctica.gov.au/news/explore-antarctica/krill/
[29] Eugene J. Murphy et al, "Restricted regions of enhanced growth of Antarctic krill in the circumpolar Southern Ocean," 11; Devi Veytia et al., "Circumpolar projections of Antarctic krill growth potential," *Nature Climate Change* 10 (June 2020): 568.
[30] "CAMLR Convention text." Commission for the Conservation of Antarctic Marine Living Resources, last modified November 25, 2013, https://www.ccamlr.org/en/organisation/camlr-convention-text
[31] "The Protocol on Environmental Protection to the Antarctic Treaty," Secretariat of the Antarctic Treaty, accessed June 24 2021, https://www.ats.aq/e/protocol.html
[32] James Rogers, Andrew Foxall, and Matthew Henderson, "Chile and the Southern Hemisphere: Antarctica in Transition?"

natural gas".[33] These hydrocarbons are underneath 4.8 kilometres of ice, and currently the cost to access them outweigh their value.[34]

Access to Natural Resources in 2041

By 2041, advances in technology, combined with the effects of climate change, may have allowed more countries to access minerals in Antarctica. From 1975 to 2006, off-shore drilling capabilities increased from 64.6 metres to 1284.9 metres.[35] Since 2021, off-shore drilling has increased at a similar rate, with private companies leading the development of new technology to meet the demand for hydrocarbons. Furthermore, the impact of climate change has facilitated a change in priorities from scientific research to commercial interests.[36] Minerals such as hydrocarbons are a finite resource and useful in energy production. As there was not a concentrated, global shift towards to renewable energies and countries continued not to meet their carbon emission targets, demand for these resources has increased. Australia's demand for gas has remained, consistent with Australian Prime Minister Scott Morrison's economic plan for a post pandemic "gas-fired recovery".[37] Demand for oil has increased in developing countries, in line with the projected increase predicted by the International Energy Agency.[38]

The ATS has little legal recourse for the signatories to take to stop countries who participate in mineral extraction in Antarctica, especially non-signatories who do not recognise the treaties. This was not a concern in 2021 as mineral extraction was cost prohibitive and difficult to undertake, however, as technology progressed, it became a cost-effective way of accessing finite mineral resources. Not only is there a demand from states, there has also been a demand from private companies. Similar to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the Outer Space Treaty), the ATS is centred on states and their relationship to the Antarctic territory.[39] In 2021, space was no longer solely the domain of states as private companies such as SpaceX, Blue Origin and Virgin Galactic developed technologies

[33] James Rogers, Andrew Foxall, and Matthew Henderson, "Chile and the Southern Hemisphere: Antarctica in Transition?" 13.
[34] James Rogers, Andrew Foxall, and Matthew Henderson, "Chile and the Southern Hemisphere: Antarctica in Transition?" 13.
[35] Pavel G. Talalay and Alex R. Pyne. "Geological drilling in McMurdo Dry Valleys and McMurdo Sound, Antarctica: Historical development," *Cold Regions Science and Technology* 141 (2017): 140.
[36] Ekaterina Gladkova, Gustavo Blanco-Wells, and Laura Nahuelhual, "Facing the climate change conundrum at the South Pole: actors' perspectives on the implications of global warming for Chilean Antarctic governance," *Polar Research* 37 (2018): 8.
[37] Scott Morrison, "Gas-Fired Recovery: Media Release," accessed July 1, 2021, https://www.pm.gov.au/media/gas-fired-recovery
[38] "Oil 2021," International Energy Agency, accessed July 1, 2021, https://www.iea.org/reports/oil-2021
[39] "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies," United Nations: Office for Outer Space Affairs, accessed July 5 2021, https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introouterspacetreaty.html

for space exploration and sending people to space.[40] Developments in technology have made is possible for private companies, albeit worth billions of dollars, to venture into space. Similarly, the ATS was signed by states and prohibits them from mineral exploitation, however, due to the increased demand for and price of minerals such as hydrocarbons, private companies have been exploiting mineral resources in Antarctica. The ATS is unable to regulate resource extraction by private companies and has rendered the treaty ineffective in prohibiting mineral exploitation in Antarctica.

Conclusion

The ATS is sustainable insofar as states adhere to international norms and accept the principles of the treaty. Climate change, and the environmental impacts which will occur as a result, calls into question the effectiveness of the ATS to govern Antarctica and the Southern Ocean in the future. A greater demand for biological resources such as krill, as well as easier access to and scarcity of mineral resources, such as hydrocarbons, will influence whether states observe international treaties such as the ATS, especially if it is perceived to be detrimental to their own national interests to do so. If states continue to act in their own self-interest in relation to finite resources, the ATS will not be sustainable in governing the Antarctic region and its unique environment in the long term.

[40] Tim Levin, "Richard Branson beat Jeff Bezos to the edge of space. Here's how Virgin Galactic's plans stack up to Blue Origin and SpaceX," last modified July 12, 2021, https://www.businessinsider.com.au/elon-musk-jeff-bezos-branson-spacex-blue-origin-virgin-2021-5

A NEW BOUNDARY DISPUTE IN THE AMERICAN SOUTHERN OCEAN (AND ANTARCTICA)

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The Australian Precedent and the December 2004 *Gentlemen´s agreement* on continental extended shelf claims in Antarctica

In November 2004 the Australian government surprised the polar community enclosing to the *Commission on the Limits of the Continental Shelf* (CLCC)[41] a corpus of geo-scientific data and cartography that, in one single geo-legal and geo-scientific context, included millions of kms^2 of submarines spaces corresponding to the so-called *Australian sector* of Antarctica[42]. Important is that, with this political decision, Canberra's government presented the said *Antarctic territorial claim* connected to Heard and McDonald Islands, situated, as we know, in the Southern Ocean northward 60º South, within the area of application of the *Convention on the Conservation of the Antarctic Marine Living Resour*ces (CCMLAR)[43]. A simple view of the resulting cartography reveals an extended *Australian geographical continuity* beginning in the soil and subsoil of the Southern Ocean ending in the South Pole[44] (map 1).

Because of several reasons, the international Antarctic community reaction to the 2004 Australian decision was of concern. Firstly, because the Australian claim was understood as a statement pointing that – from then onwards and on what maritime Antarctic territorial affairs was concerned – in Canberra´s view the *United Convention of the Law of the Sea* normative (UNCLOS) *prevailed* over the *Antarctic Treaty System* regulations. If this was the case, then Australia was in fact submitting a new interpretation of Art. IV of the Antarctic Treaty[45], asking CLCC to be recognized a Coastal State in Antarctica. As it is also known, on this

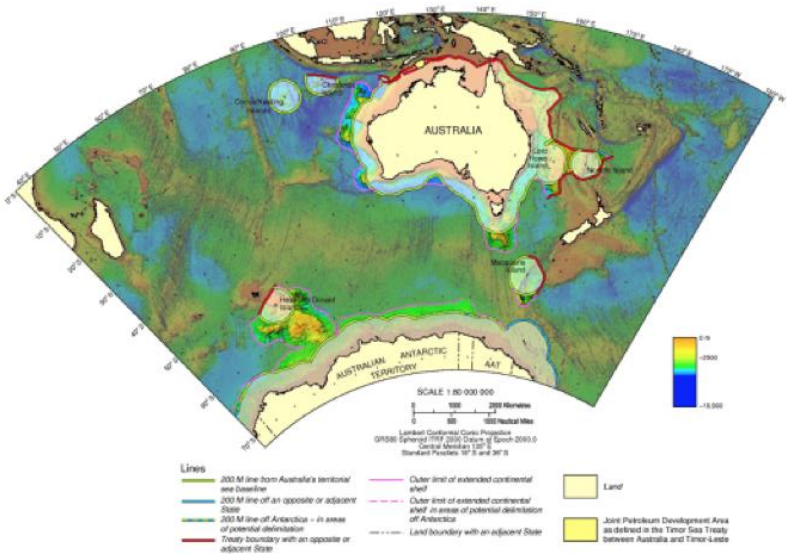
[41] See: https://www.un.org/depts/los/convention_agreements/texts/unclos/annex2.htm
[42] See the Executive Summary in: https://www.un.org/depts/los/clcs_new/submissions_files/aus04/Documents/aus_doc_es_web_delivery.pdf
[43] See Art. I of the Convention on the Conservation of the Antarctic Marine Living Resources. Available in: https://www.ccamlr.org/en/organisation/camlr-convention-text
[44] A comprehensive description of the geo-historical and legal rationale of Australia´s involvement in Antarctica in: Shipton, R.F. (Chairman). *Australia, Antarctica, and the Law of the Sea: Australian Parliament Joint Committee on Foreign Affairs and Defence, Interim Report 1978*.
[45] Art. IV.2. *No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting, or denying any claim of territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force.*

very regulation the entire *Pax Antarctica* is sustained. While the treaty is in force, no territorial claim can be enforced beyond 60º South.

Although strictly speaking – according to UNCLOS – what Australia was claiming were *sovereign rights for the purpose of exploring it and exploiting* the *natural resources* of the continental shelf beyond 200 miles[46], such exploration and exploitation cannot be artificially separated from the sovereignty over *the territory*, properly[47].

Second, because the Australian government submission to CLCC was produced by its Ministry of Petroleum, many observers interpreted this *detail* as an indication of a renewed interest on Antarctic mineral resources, rather on the conservation of benthic ecosystem linked to submarine soil and subsoil. This was indeed surprising, keeping in mind that, not long before, during the *XI Special Antarctic Treaty Consultive Antarctic Meeting* (Viña del Mar, Chile, November 1990)[48], Australia was a leading voice in favour of *replacing* the *Antarctic Convention on the Regulation of Antarctic Mineral Activities Regulations*[49] for a legal system specifically intended to protect Antarctic marine ecosystems (later the *Environmental Protocol to the Antarctic Treaty*)[50].

From these aspects, the Australian claim of *extended continental shelf* (ECS) in Antarctica and in the Southern Ocean, within CCMLAR area of application, was understood as *quite a change of heart* in the Australian diplomatic and geopolitical thinking.



Map 1. Australia ECS as submitted in November 2004. Source: Australian Executive Summary to CLCC.

To overcome the diplomatic (and

[46] UNCLOS Art. 77.1
[47] On this essential aspect see i.e.: Morris, Christopher W. ***An Essay on the Modern State. Chapter 7. Sovereignty***. (Cambridge, 1998):172-227
[48] See *i.e.:* Beck, Peter J. ***Antarctica, Viña del Mar and the 1990 UN debate***. In: Polar Record, Volume 27. Issue 162. (July, 1991). Pp.211-216.
[49] On the matter, see: Orrego Vicuña, Francisco. ***Antarctic Mineral Exploitation. The Emerging Legal Framework.*** (Cambridge, 1988).
[50] See *i.e.*: Redgwell, Catherine. ***Environmental protection in Antarctica: The 1991 Protocol*.** In: The International & Comparative Law Quarterly. Vol. 43. Nº3. (July, 1994). Pp. 599-636.

political) impasse originated by such a claim of *sovereignty over natural submarine resources* protected by the Antarctic Treaty System regulations, an informal meeting of *Antarctic powers* was called. This reunion took place in New York in December 2004, and ended with a *gentlemen's agreement* which, *voluntarily,* committed all potential claimants of Antarctic ECS to formally request *not to revise* the CLCC *for the time being* especially any aspect of any Antarctic component and of any given submission[51]. Time will show that this was too little too late.

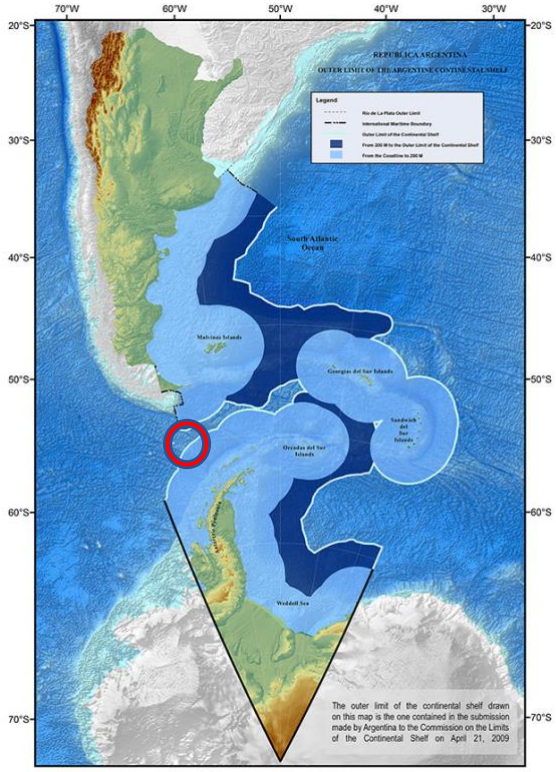
UNCLOS Part VI and The Old *Antarctic Problem*

This came to be true in April 2009, when Argentina submitted CLCC a maximalist ECS claim over marine soil and subsoil from this country´s border with Uruguay and Rio de la Plata Estuary, to the coasts of Patagonia and Tierra del Fuego and, from there, toward submarine areas adjacent to the Falklands, South Georgia, and South Sandwich Islands. Then, from this last archipelago, the Argentine ECS claim prolonged to the South Orkneys, South Shetland to, finally, reach the Antarctic Peninsula coasts.

While the last area is indeed covered by the Antarctic Treaty itself, as happen in the case of Heard and McDonald Islands, South Sandwich and South Georgia areas are covered by the CCMLAR conservation regime. Because the CCMLAR is also applicable to the benthic environments and benthic resources, like the Australian 2004 claim, the Argentine claim had an additional impact over the *environmental rational* of the Antarctic Treaty System[52].

From a hemispheric point of view[53], Argentina´s territorial claim under UNCLOS made clear that, after fifty years of *Pax Antarctica*, in the American sector of the Southern Polar Region we were confronted with a situation that can well conduce to a new (and *old*) *Antarctic Problem*[54].

[51] A copy of this gentlemen´s agreement is attached to a Chilean note dated 25 May 2016. See in: https://www.un.org/depts/los/clcs_new/submissions_files/arg25_09/chl_re_arg_2016_s.pdf
[52] See i.e.: Scott, Karen. Institutional Development within the Antarctic Treaty System. In: International & Comparative Law Quarterly. Vol. 52. Issue 2. April, 2003. Pp.473-487.
[53] Here we refer to the Western Hemisphere, namely, to the Americas.
[54] Christie, EWH. *The Antarctic Problem. An historical and political study* (London, 1951).



Map 2. Argentina´s ECS as submitted to CLCC in April 2009. A red circle indicates a *halfmoon* of circa 9.000 kms2 of shelf situated beyond the border agreed with Chile (1984). This *halfmoon* is situated within the Chilean continental shelf´s projection of 200 miles counted from Cape Horn and Diego Ramírez Islands.

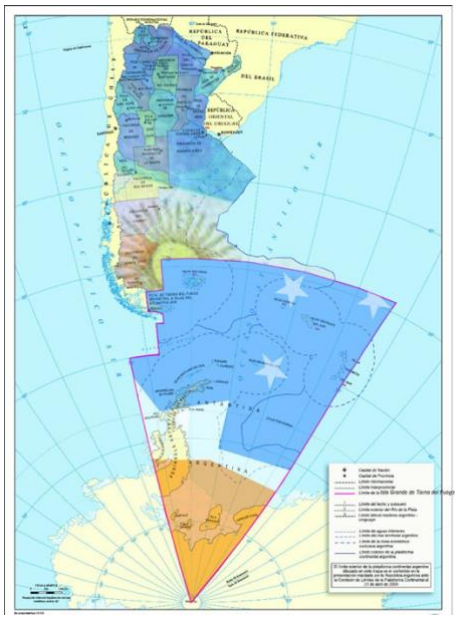
UNCLOS and Argentina's ECS in the Southern Ocean and Antarctica

From an Argentine legal and geostrategic perspective, 21st Century International Law on ECS regulations provides the necessary legal and geoscientific tools to, first, reiterate a *historical sovereign claim* over submarine spaces adjacent to South Atlantic islands under British administration and, in the same geopolitical framework, to demonstrate *the political unity and consistency* of the so-called *Provincia de Tierra del Fuego, Antártida e Islas del Atlántico Sur*. Combining both aspects illustrates the *bicontinental nature* of the Argentine territory.

Map 3 illustrates how this last political-administrative entity of internal law contains archipelagos administrated by the United Kingdom, together with Argentina's Antarctic claim (as known from 1947)[55]. Compared with other countries' Antarctic claims, a revealing detail of the novelty of *Antártida Argentina* lies in the fact that, in February 1943 Buenos Aires´ governments notified the British government that *Antártida Argentina* extended southward 60ºSouth, between 25º West and 68º34´West, that is, from a longitude east of South Sandwich Island to a longitude immediately westward to the Cape Horn Islands. However, after, in 1947, following a decision of its *Antarctic Committee*, Argentina modified the western border of its claim, prolonging it up to 74º West. Most apparently, this modification was intended to include within this claim the integrity of the Antarctic Peninsula.

[55] A comprehensive description of Argentina and other countries Antarctic claims in: Headland, Robert K. *A Chronology of Antarctic Exploration.* (London, 2009):25-28.

Unlike the outer limits of *Territorio Antártico Chileno* (which has no northern limit and was informed in 1940 after a detailed study of geo-historical and legal rights[56]), the 1947 *Antártida Argentina* must be linked to internal politics developments, in particular: first, Buenos Aires' 1946 Decree on the Continental Shelf and, secondly, to certain bilateral consultations with Chile that, eventually, after a first *joint declaration* signed in Buenos Aires in July 1947, ended in a second *joint declaration* by which both countries recognized each other sovereign rights in Antarctica[57]. The limits of the *Antarctic boundary* between both countries has never been established.



Map. 3 Province of Tierra del Fuego, Argentine Antarctic and Islands of the South Atlantic. As shown in maps 2 and 9, the geopolitical concept encapsulated in this depiction acquires legal content through the implementation of UNCLOS Part VI. Relevantly, along the meridian of Cape Horn, for about 100 nautical miles, this official map unilaterally prolongs the boundary agreed in 1984 with Chile from 58º21´South to 60º South.

The 1947 Argentinean Antarctic claim is also *an adaptation* to the area of application of the *InterAmerican Treaty of Reciprocal Assistance* (in Spanish, TIAR)[58]. This instrument was signed in September 1947, that is, a few months after the Argentine Antarctic Decree, and at the time the first Antarctic conversations with Chile were held.

[56] See: Santi, H. & Riesco, R. ***Las Fronteras Antárticas de Chile***. (Santiago, 1986).
[57] Pinochet de la Barra, Oscar. ***La Antártica Chilena***, (Santiago, 1976):151-153.
[58] TIAR Art. IV Area of Application: *The region to which this Treaty refers is bounded as follows: beginning at the North Pole; thence due south to a point 74 degrees north latitude, 10 degrees west longitude; thence by a rhumb line to a point 47 degrees 30 minutes north latitude, 50 degrees west longitude; thence by a rhumb line to a point 35 degrees north latitude, 60 degrees west longitude; thence due south to a point in 20 degrees north latitude; thence by a rhumb line to a point 5 degrees north latitude, 24 degrees west longitude; thence due south to the South Pole; thence due north to a point 30 degrees south latitude, 90 degrees west longitude; thence by a rhumb line to a point on the Equator at 97 degrees west longitude; thence by a rhumb line to a point 15 degrees north latitude, 120 degrees west longitude; thence by a rhumb line to a point 50 degrees north latitude, 170 degrees east longitude; thence due north to a point in 54 degrees north latitude; thence by a rhumb line to a point 65 degrees 30 minutes north latitude, 168 degrees 58 minutes 5 seconds west longitude: thence due north to the North Pole*.

On this matter it is important to note that, in the current Argentine analysis, in 1982 TIAR failed to provide political and military support during the Falkland's conflict with Britain[59]. While this fact made TIAR the object of many critics from Argentinean scholars, in the long run this legal instrument has provided a general political base for opposing the British presence in a group of islands situated 280 miles from Patagonia´s coast. Signed in the context of the Cold War, TIAR was conceived as a reformulation of the so-called *Monroe Doctrine* (*America for the Americans*)[60]. More recently *the essence* of such an idea has been adapted to become instrumental for an Argentinean policy addressed to transform the *causa de Malvinas* into a Latin-American issue[61]. This, by reinforcing a *narrative* that asserts that the British administration of South Atlantic islands constitutes an *extracontinental and colonial threat* to the Western Hemisphere's peace and security[62].

Equally relevant is that, despite the signature of the 1984 *Treaty of Peace and Friendship with Chile* (TPA), Argentina was aware that its pretensions over Chilean territories beyond Cape Horn represented an even more apparent threat to the Americas´ peace and security, and consistently blamed its neighbour of stubbornness and – especially after 1977 – practiced an aggressive territorial policy which caused a bilateral crisis that, for many years, endangered peace in the Americas. This without even considering the continental crisis which originated in the military invasion South Georgia and Falkland Islands by Argentina in early April 1982.

From 2009 ECS claim Argentina has recovered the essence of an old geopolitical narrative, asserting – in addition to its historical claim over British islands – renewed rights over thousand square kilometres of marine soil and subsoil within the 200 nautical miles projection of Chile's *Región de Magallanes y Antártica Chilena* (see map 4). The intention is (most evidently) that of restricting Chile`s projection toward Antarctic areas. In such manner and like before the Antarctic Treaty was signed (1959), while pretending both British and Chilean Southern Ocean submarine spaces, employing a renewed argument (UNCLOS), Argentina is imposing a new (but very old fashioned) *Antarctic problem*[63].

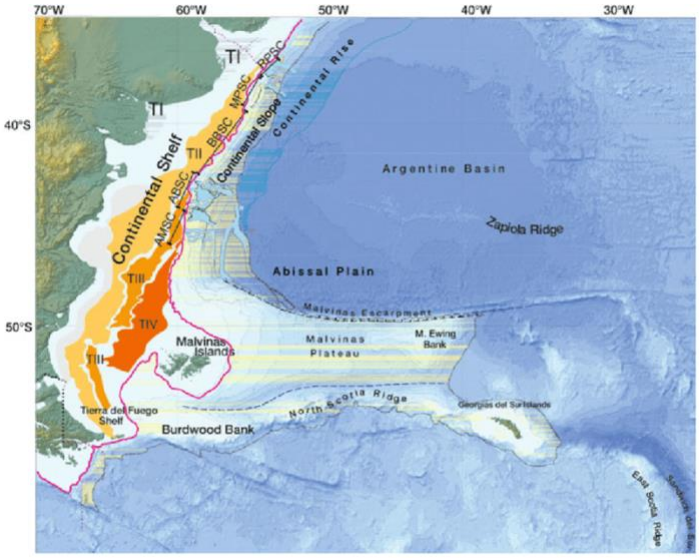
[59] In Latin America is widely accepted that TIAR is a testimony of the USA Cold War policy to the region. Most recently, and with no result, the USA attempted to apply it to the Venezuelan situation.
[60] See: ***The Monroe Doctrine: Meanings and implications***. In: Presidential Studies Quarterly. Vol 36, Nº1. (Washington, 2006):5-16.
[61] See: Malvinas, una causa regional justa. CLACSO. Buenos Aires, 2020. http://biblioteca.clacso.edu.ar/clacso/se/20200213033904/Malvinas-Una-causa-regional-justa.pdf
[62] See: Filmus, Daniel. *¿Por qué Malvinas es una causa latinoamericana?* (Ministry of Foreign Affairs of Argentina. In: https://cancilleria.gob.ar/es/por-que-malvinas-es-una-causa-latinoamericana.
[63] Guzmán, Jorge G. La plataforma continental extendida: El caso de Chile y Argentina en el Mar Austral y la Antártica. In: Revista de Marina Nº957. Viña del Mar, 2017. Pp.12-17.

Map 4. Region of Magallanes and Chilean Antarctic, Chile. An essential aspect of the image refers that the *Chilean Antarctic Territory* has no northern limits, that is, that it extends north and south the area of the Antarctic Treaty (60ºSouth).

Beyond any doubt, Argentina´s interpretation of farthest south issues is not only geohistorical nor juridical, but mainly geopolitical and geostrategic. That is the main reason why Argentina´s foreign and defence policies are focused in promoting a *political* rather properly legal analysis of all issues related to the *modus vivendi* in the Southern Ocean and Antarctica.

The novelty in this traditional political approach is, as announced, the *maximalist use* of UNCLOS´ geo-legal rules on ECS for maximizing the coordinates of its alleged *continental margin.* As illustrated in maps 2 and 5, this geo-legal formula allows this country to reinforce its territorial claim over British archipelagos while, at the same time, ignore the legal continental shelf of 200 miles projected from these such islands.

However, if the continental margin aspect is useful to reassert Argentina´s claim over *Malvinas* (in fact, Falkland, South Georgia, and South Sandwich Islands, as well as the British Antarctic Territory-Queen Elizabeth Land), the same formula has very limited importance to reassert a Western projection to Antarctica counted from the southeast extreme of Tierra del Fuego and Staten Islands. As it will be later commented, in this last case the Southern Ocean marine geology seems to play in favour of the Chilean interest.



Map 5. Argentina´s continental Margin in the South Atlantic and Southern Ocean. Source: Violante, R.A. & Laprida, C. & García Chapori, N. The Argentina Continental Margin. A potential paleoclimatic-palaeoceanographic archive for the Southern Ocean. (e-book, 2017).

The fact that Argentina`s *Antarctic appurtenance* depends, in the East, from its sovereignty over territories governed-claimed by the UK and, in the West, of keeping Chile´s projection restricted to Cape Horn meridian, explains why the 2009 Argentine Note to CLCC encompassing the submission encapsulated in Maps 2 and 9 omitted -very simply- the 2004 *gentlemen's agreement* formula of *not to revise for the time being*. As indicated, this expression summarized a political consensus intended to, precisely, avoid any misunderstanding on what the relation between UNCLOS and the Antarctic Treaty regime was in the future to be. In whatever case, the open Argentine violation of the said *gentlemen´s agreement* was immediately noted by the polar community.

In fact, the said Argentine government Note omission [64] motivated the rapid reaction of the governments of the United Kingdom, the United States, the Russian Federation, India, Japan, and the Netherlands. All these countries expressly asked CLCC to recall the relevance of preserving the special legal status of Antarctica and, consequently, *not to revise for the time* being the Antarctic component of the Argentine territorial ECS claim. Relevantly, CLCS did not considered this part of Buenos Aires' submission.

[64] Although the Argentine Commission on Continental Shelf (COPLA) was established in 1998 (see: www.copla.ar.gov), the rationale of the maximalist territorial claim of 2009 was decided during Peronist the administrations of Nestor Kirchner (2003-2007). Previously Governor of the Patagonian Province of Santa Cruz, Mr. Kirchner was a well-known *hardliner* on whatever the bilateral relation with the UK and Chile was concerned (he repeatedly accused Chile of *collaboration with the English* during the *Malvinas* (Falkland) War. The confrontational policy towards the UK was continued during his wife administration, Cristina Fernández de Kirchner (2007-2015). Currently Mrs. Fernández is the Argentinean VicePresident. See i.e.: Gómez, Federico. *El Gobierno de Cristina Fernández y su Política Exterior hacia la Cuestión Malvinas: La profundización de un modelo heredado*. (Córdoba, Argentina, 2011). In: https://www.academia.edu/1315033/El_gobierno_de_Cristina_Fernández_y_su_pol%C3%ADtica_exterior_hacia_la_Cuestión_Malvinas_La_profundización_de_un_modelo_heredado?email_work_card=title

Nevertheless, in 2012 the legal, political, and geopolitical situation created by the 2009 Argentine ECS became instrumental for a new frontal encounter between the British and Argentine diplomacies. This happened in a scenario in which, previously, the United Kingdom had made clear that it was not submitting to ECS claim corresponding to areas beyond 60º south (14 May 2009)[65]. Despite that, in polar circles this British political decision was highly appreciated (in terms that it was a sensible contribution to the *life expectancy* of the Antarctic Treaty System), the Argentine government felt anyway motivated to escalate the situation enclosing another Note to reiterate not only that Falkland and *other islands remained illegally occupied* by Britain, but, also, to insist in its territorial claim over what in this opportunity Buenos Aires´s diplomacy called the *Argentine Antarctic Sector*[66].

Again, interpreted both UNCLOS Part VI as from the Antarctic Treaty Art. IV provisions, this *rappel* of an old territorial pretention had no effect, or whatsoever. Nevertheless, in political terms, the same was understood as a manifestation of the renewed geopolitical will of Argentina.

Argentina´s geopolitical rationale for the *farthest south of the world*

In order to understand ECS Argentine claim rationale, it is necessary to recall that, shortly after the United States government issued the so-called *Truman Proclamation* on continental shelf (September, 1945)[67], General Juan Domingo Perón´s issued a Decree stating that, because his country´ *submarine platform* is *morphologically and geologically closely related to the continent* of South America, it was proper to declare that, both the *mar epicontinental* (water column) and the *zocalo continental* (later continental shelf) confronting the Atlantic South American coast southward Río de la Plata, appertained to Argentina´s legal domain (October 1946)[68].

While – in nautical miles – this Decree omitted to establish the extension of Argentina´s submarine sovereignty, later interpretations allowed Buenos Aires diplomacy to affirm that the mentioned *1946 proclamation* -independent of any distance counted from South America´s coast- referred to the entire *natural prolongation* of the continental margin confronting Argentinean South American territory. Additionally, and exactly because the 1946 Argentinean continental shelf established no explicit outer limits, such criterium was later applicable to engulf the continental shelf of territories adjacent to Falkland and other South Atlantic British archipelagos, as well as to *project sovereignty* toward Cape Horn and other Chilean adjacent islands´ continental shelf.

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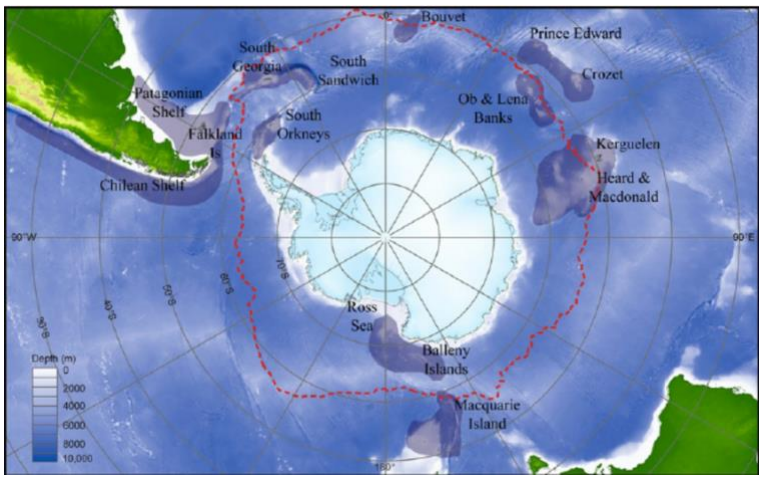
[65] Executive Summary in: https://www.un.org/depts/los/clcs_new/submissions_files/gbr45_09/gbr2009fgs_executive%20summary.pdf

[66]https://www.un.org/depts/los/clcs_new/submissions_files/arg25_09/arg25_arg_2012.pdf

[67] *Proclamation 2667 0f September 28, 1945. Policy of the United States with respect to the natural resources of the subsoil and sea bead of the continental shelf*. See in: https://www.gc.noaa.gov/documents/gcil_proc_2667.pdf

[68] Decreto 14.708/46 of 11 October 1946.

By insisting that Cape Horn, Falkland, South Georgia, and South Sandwich Islands were Argentinean territories, along the following decades Argentina pretended to provide its Falkland/Malvinas and Antarctic claims with a geo-legal base[69]. The geostrategic reason can be observed in any map depicting the American South Cone and American Antarctica: Without sovereignty over the mentioned Chilean and British archipelagos, South American Argentina has no legal projection nor *geographical continuity* toward the so-called *Antártida Argentina* (which includes also South Orkneys Islands from where the Argentine claim *can continue* towards the Antarctic Peninsula and South Shetland Islands). Simple like that.



Map 6. In polar projection this image illustrates how Argentina`s Atlantic continental shelf has no continuity towards Antarctic Regions. It also shows the continental margin around Cape Horn, where Buenos Aires` polar pretentions are blocked by both marine geology and the projection of Chile´s southernmost islands.

During the negotiations that eventually conduced to UNCLOS signature (1973-1982)[70], overcoming these geographical limitations became a main goal for Argentina´s diplomacy. Unlike Chile (concerned with the *Territorial Sea*, *EEZ*, the status of *international straits* and the problem of navigation in *internal waters* (hundreds of Fuegian and Patagonian fjords)), all along Third UN Conference on the Law of the Sea, Argentina focused on issues related to continental shelf[71]. With this in mind, this country actively participated of the group of so-called *marginalists* (Coastal States affirming the continental shelf outer limits had to be established at the very end of the outer margin of the shelf[72]), as well as in the committee

[69] An Argentine Antarctic chronology in: Vlasich, Verónica. ***Institucionalización de la Actividad Antártica Argentina. Visión de Corto y Mediano Plazo del Programa Antártico Argentino***. Available in: https://www.centronaval.org.ar/boletin/BCN836/836-VLASICH.pdf.

[70] A comprehensive summary in: Treves, Tullio. ***Convention of United Nations on the Law of the Sea.*** Available in: https://legal.un.org/avl/pdf/ha/uncls/uncls_e.pdf

[71] An introductory text on the history of the continental shelf legal institution in: Jewett, Marcus L. *The evolution of the legal regime of the continental shelf*. In: Canadian Yearbook of International Law. Vol. 22 (Ottawa, 1984):153-193.

[72] UNCLOS Art. 76.3 3. *The continental margin comprises the submerged prolongation of the land mass of the coastal State and consists of the seabed and subsoil of the shelf, the slope and the rise*.

responsible for the final proposal of UNCLOS Part VI. Argentina is *a true veteran* of the continental shelf problem.

Before, however, this country had established that its submarine sovereignty extended until 200 metres deep[73], or until the deep of the column of water made possible the exploitation of the continental shelf natural resources, only[74].

Equally relevant is that upon UNCLOS signature, Argentina made several legal *reserves* addressed to protect its interests in the South Atlantic and Antarctica (ultimately its *ad hoc* interpretation of International Law of the Sea and certain UN General Assembly Resolutions). For this Buenos Aires diplomacy stated that*, bearing in mind that the Malvinas* (Falkland) *and the South Sandwich and South Georgia Islands form an integral part of Argentine territory, the Argentine Government declares that it neither recognizes nor will it recognize the title of any other State, community or entity or the exercise by it of any right of maritime jurisdiction which is claimed to be protected under any interpretation of resolution III that violates the rights of Argentina over the Malvinas* (Falkland) *and the South Sandwich and South Georgia Islands and their respective maritime zones*[75].

In 1994 -the same year UNCLOS entered into force- all these precepts were incorporated into the Argentine Political Constitution which, from then onwards, formally made *the recovery* of the mentioned British islands (and the *maritime adjacent spaces*) not only a permanent goal for the country´s foreign policy, but a constitutional obligation for any given government[76].

This is, finally, the geo-legal and geopolitical rationale the Law 25.557 passed by the Argentine Congress on 10 June 2020 to establish the outer limits of its ECS in the South Atlantic, the Southern Ocean and -relevant- Antarctica[77]. After this Buenos Aires' government has sustained that this law identifies the geographical coordinates of all *fixed points* establishing the outer limits of Argentina's submarine sovereignty, as all of them were previously *validated* by CLCC. This is not entirely the case.

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[73] Argentine Law 117.094, Art. 2. 29 December 1966. Available in: https://www.argentina.gob.ar/normativa/nacional/ley-17094-48474/texto.

[74] A description of Argentine historical regulations on maritime sovereignty before UNCLOS in: García Amador, F.V. *América Latina y el Derecho del Mar.* (Santiago de Chile, 1976):48-52.

[75] Argentine Declarations and Reservations upon UNCLOS signature and upon ratification in: https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en#EndDec

[76] The 1994 Argentine Constitution includes a *First Transitory Provision* (*Disposición Transitoria Primera*) that, in our translation, states: *The Argentine Nation ratifies its legitime and imprescriptible sovereignty over Malvinas (Falkland) Islands, South Georgia and South Sandwich [archipelagos] and the maritime and insular corresponding spaces, because they are integral parts of the national territory. The recovery of such territories and the full exercise of sovereignty, with respect of the style of life of its inhabitants and in accordance with International Law, are permanent and unpronounceable goals of the Argentine people*.

[77] Ley 2557 que incorpora una demarcación del límite exterior la plataforma continental de la República Argentina (*Law that incorporates a outer limits to the continental shelf of the Argentine Republic*). 10.07.2020. See in: https://www.senado.gob.ar/parlamentario/comisiones/verExp/61.20/PE/PL

Nonetheless and in perspective, this new Argentinean law represents the *culmination* of a long internal and international political process that, while implementing an old-fashioned geopolitical doctrine conceived during las quarter of the XIX century (to consolidate Argentina´ status as a relevant geopolitical player both in the Western as in the Southern Hemisphere)[78], provides this country´s territorial pretensions with a juridical sustain for a subsequent diplomatic *staging*.

However, and as shown in Map 6, this formula has several essential deficiencies associated, very mainly, to Chile´s geological advantages in the area extending beyond TPA *hammer* (See map 7), and the fact that, in the East, CLCC has no chance -or whatsoever- to validate its claim over Falkland Island, etc.

A new boundary dispute between Chile and Argentina in the Circumpolar Southern Ocean

Chile´s diplomacy did not immediately singularized the threat to the TPA *status quo* emanating from the legal and geopolitical challenge imposed by the 2009 Argentina´s maximalist territorial claim[79]. This despite that, first, in the South Atlantic, Argentina´s decision was intended to deep the controversy with the United Kingdom and, accordingly and more apparently, to affect the hemispheric peace and security in general, and the *modus vivendi* southward the Magellan Strait latitude in particular (including navigation from or to this maritime passage, and navigation from and to Antarctica)[80].

Second, despite that, in what Antarctica was concerned, Argentina´s pretensions overlapped to *Chilean Antarctic Territory*[81]. On this matter Chile relied in some formal observations included in a Note dated 9 May to the UN Secretary General.

Thirdly and even more apparent, despite that the 2009 Argentinean claim included thousands of kms2 of submarine territory situated Southwards and South-eastwards Cape Horn, beyond

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[78] *See i.e.*: Sanz, Pablo R. *El Espacio Argentino* (Buenos Aires, 1976); Asseff, Alberto Emilio. *Proyección Continental de la Argentina* (Buenos Aires, 1980); Díaz Loza, Florencio. *Geopolítica para la Patria Grande*. (Buenos Aires, 1987).

[79] See our essay *El fin de la siesta* (*The end of the [Chilean] nap*) in: https://ellibero.cl/opinion/el-fin-de-la-siesta/

[80] New strategy Peronist strategy for the falkland

[81] An important aspect is the, in November 1940, Chile established the outer limits of *Antártica Chilena* between 53º West and 90ºWest. The first longitude corresponds to the Atlantic border between Uruguay and Brazil, that is, the former limits between the Spanish and Portuguese empires; the second meridian corresponds to the Western limits of the Western Hemisphere, as this "fourth part of the world' was, since the XVI century, illustrated in Western cartography. This meridian is also incorporated in the *Interamerican Treaty of Reciprocal Assistance* (Treaty of Río, 1947) as the occidental limit of the *Western Hemisphere*. Because of what established in well-known Treaty of Tordesillas of 1494), since the times of Spanish conquest, Chile was understood as ending in the South Pole; accordingly, the *Chilean Antarctic Territory* has no northern limit, that is, the country it is continuity between the southernmost Fuegian archipelagos and Antarctica Americana. This aspect implied that Argentina´s continental shelf pretensions covered an important area of Chilean Antarctic submarine territories. More recently, and in accordance with the said geo-historical and legal tradition, the 1940 geographical concept has been incorporated in the new Chilean Antarctic Law (*Estatuto Antártico*), in force since February 2021.

the boundary agreed with the Treaty of Peace and Friendship signed in Vatican City in November 1984 (TPA)[82].

Significant is the fact that, on what this specific aspect was concerned, Argentina´s government and political class were indeed aware that, in this very sector, in accordance with UNCLOS Art. 77, *ipso jure* Chilean rights associated to the 200 miles projection of Diego Ramírez Islas pre-existed (see map 10)[83]. The said islands were known to cartography and navigators from 1619.

The Argentine government was also aware that, in May 2009 with a Note dated 7 May 2009 and addressed to the UN Secretary General[84], Chile had informed CLCC that, *inter alia*, its continental shelf rights were protected by UNCLOS Art. 77 provisions[85].

However, Buenos Aires continued employing its interpretation of UNCLOS Part VI geoscientific formulas over spaces where a Chilean projection was most certainly apparent. In fact, Diego Ramírez Islands were discovered in 1619, and from them onwards have been properly depicted in the world`s cartography. Because every single official communication to the Commission is later made available *via* its webpage, Argentina was indeed aware of this early Chilean objection.

Of additional legal and political importance is the fact that Argentina`s invocation of UNCLOS´ regulations for an area situated beyond the southernmost *confine* agreed with Chile in 1984, unilaterally modified the *modus vivendi* established by its *Treaty of Peace and Friendship with Chile*[86]. Signed in 1984 (after almost a century of territorial disputes), this bilateral treaty was intended not only to supersede historical problems, but to prevent any future territorial dispute or misunderstanding in the area. From a Chilean point of view this was an essential issue, because TPA encapsulates a political and geographical compromise that solved a long crisis initiated in the *Argentine interpretation* of a clause of the 1881 Boundary: namely, that the *Argentinean Beagle Channel* is *the real Beagle Channel*, not that generally depicted in world's geography and cartography[87]. Incredible.

A basic aspect of TPA compromise was referred to the fact that it established a boundary *hammer shaped* (Map 7) which extends from Point A (Beagle Channel Eastern entrance) to Point F (southward Cape Horn). This last constituted, in principle, *the final and irrevocable*

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[82] *Tratado de Paz y Amistad*. See: https://treaties.un.org/doc/Publication/UNTS/Volume%201399/volume-1399-I-23392-English.pdf

[83] Chilean Diplomatic Note to the Un Secretary General of 17 May 2009. See in: https://www.un.org/depts/los/clcs_new/submissions_files/preliminary/chl2009note_e.pdf

[84] Available in: https://www.un.org/depts/los/clcs_new/submissions_files/preliminary/chl2009note_e.pdf

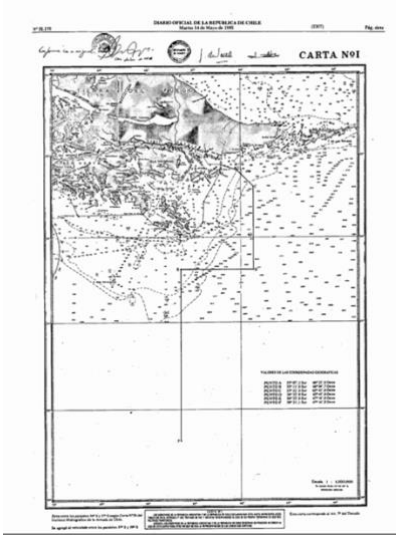
[85] UNCLOS Art. 77.3. *The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation*.

[86] English text in: https://treaties.un.org/doc/Publication/UNTS/Volume%201399/volume-1399-I-23392-English.pdf

[87] A summary on the Beagle Channel Dispute in: F.V. *The Beagle Channel Affair*. The American Journal of International Law. Vol. 71 Nº4 (Cambridge, 1977):733-740.

confine between the sovereignties. To make this aspect even clearer, in its Art. 14 TPA states that, in the future, *the Parties undertake not to present claims or interpretations which are incompatible with the provisions of this Treaty*[88]. Strictly speaking, beyond the *hammer* no country was to introduce any *innovation*.

Anyway, while in 2009 submitting a territorial claim beyond TPA *hammer*, Argentina asserted that UNCLOS provisions were not only compatible with TPA Art. 14, but proceeded, as shown in Map 7, to unilaterally (and unconsented) prolongate her boundary with Chile. Quite an *innovation*.



Maps 7 and 8. Left: Chart I Annexed to TPA 1984. The image depicts the boundary agreed from Point A to Point F. The area demarcated is named *the hammer*. Beyond this boundary is applicable TPA Art. 14. Right: In context this image illustrates the 2009 Argentine ECS claim beyond *the hammer*, across an area where TPA Art. 14 should, at least in principle, be applicable. The red dot indicates the approximate position of the *hammer Point F*. This, for illustrating how, in 2009, Argentina unilaterally extended its southernmost boundary with Chile (for about 100 kms).

In front Argentina's territorial Austral pretensions, Chile´s initial attitude attempted to avoid a direct impact over the bilateral relationship (then characterized by important Chilean private investments in Argentina[89]) and relied on the quoted UNCLOS Art. 77. From this aspect, Santiago's diplomacy asserted that its neighbor´s territorial pretentions beyond TPA hammer were legally infective. Time will prove that this criterium will not stop Argentina´s geopolitical will.

[88] TPA 1984, Art. 14.
[89] See i.e.: https://www.subrei.gob.cl/docs/default-source/estudios-y-documentos/inversiones-directas-en-el-exterior/003_presencia-id-cl-en-argentina-1990-dic2018a1c6c32fbab04b59945e3adf12b7a350.pdf?sfvrsn=6fd9e131_2

By 2009 Chile´s diplomacy was concerned with, first, the dispute in the International Court of Justice related to Peru´s claim on the delimitation of the maritime boundary[90] and, second, in relation to the ECS regulations, in being included among the Coastal States entitled to sustain- after May the same year- a geo-scientific and diplomatic *ping pong* with the Commission's experts. This, for -*in the future*- establish the ECS outer limits both in the Southeast Pacific and in the Southern Ocean. For such specific purpose, early in same month, Santiago´s government enclosed the *Preliminary Submission* encompassed by the before quoted Note of 7 May[91].

While not *a proper submission*, in essence Chile's *Preliminary Submission* was a juridical step intended to illustrate the CLCS with the indicative limits of the Chilean ECS, as these, in an early stage, have been identified by certain studies. From a more technical perspective, Chile's *Preliminary Submission* was aimed to demonstrate CLCC that, from the maritime border with Peru to Antarctica and from the Atacama littoral to Easter Island, the Chilean submarine territories complied with the geo-scientific *test of appurtenance* required in point 2.2 of the CLCC *Scientific and Technical Guidelines*[92].

Also, with this preliminary submission Chile announced that, in the following years, was to enclose the data and cartography to establish, area by area, the *definitive and obligatory*[93] outer limits of its ECS in both the Southeast Pacific and the Southern Ocean[94]. Though the Chilean official communication made no mention to the possibility that its final submission was to contain an *Antarctic chapter*, at the time in Santiago was understood that this was to be the case[95].

In view of a *fait accompli* (the Antarctic component of the Argentine submission), the 2009 Chilean Note to enclosing the *Preliminary Submission* expressly recalled the special legal status of the territories southward 60º South (the Antarctic Treaty area). At the same time, and invoking the 2004 *gentlemen's agreement* asserted that, in Chile´s interpretation of UNCLOS Part VI, *appurtenant to Antarctica there exist areas of continental shelf which extent has yet to be defined*, and that *it is open to the States concerned to submit information to the Commission which* -importantly– *would not to be examined by it for the time being*[96].

The same communication added an explicit reference to UNCLOS Art. 77, regarding that, in accordance its provisions, a Coastal State´s rights over the continental shelf don't depend on any explicit proclamation. From Chile`s perspective, this was applicable to both the

[90] See: International Court of Justice 172 ILR 1 (Peru v. Chile).
[91] Available in: https://www.un.org/depts/los/clcs_new/submissions_files/preliminary/chl2009informepreliminar.pdf
[92]See:https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/355/60/IMG/N0035560.pdf?OpenElement
[93] This is legal the expression used both by UNCLOS Art. 76X and the
[94] https://www.un.org/depts/los/clcs_new/submissions_files/preliminary/chl2009note_e.pdf
[95] The author is a former professional diplomat and directly participated in the initial steps that ended in the referred 2009 Preliminary Submission.
[96] Idem.

continental shelf of *Antártica Chilena* (between 53º West and 90º West), as well as to the previously referred submarine space beyond TPA *hammer* claimed by Buenos Aires projecting 60 nautical miles from the continental margin of Staten Island.

This aspect las aspect was to be understood in connection with the UNCLOS general rule stating that CLCS recommendations do not affect previous issues related to *the delimitation of the continental shelf between States with opposite or adjacent coasts*[97]. Conveniently, this rule is established both in the Convention Annex II[98] and, also, in Annex II the *Rules of Procedures* of CLCC passed by UNCLOS Parties in April 2008.

In this last case CLCC must recall that, in a case of *a dispute between States with opposite or adjacent coasts, or in other cases of unresolved land or maritime disputes*, the final competence *rest with the States*[99]. Also, that, in cases where a land or maritime dispute exists, it shall not consider nor qualify a submission made by any of the States concerned in the dispute[100].

In time, however, Chile explicit reference to UNCLOS Art. 77 was not enough to deter its neighbour's government about the inapplicability of this geo-scientific and geopolitical exercise beyond the 1984 *hammer*. Buenos Aires opted for ignoring not only the legal implications of claiming a *halfmoon* of submarine soil and subsoil projected from Staten Island continental margin, but also the possibility that Chile reacted, as it finally happened, establishing the limits of 200 nautical miles of well-known Chilean islands overlapping with its claim beyond TPA Point F, and creating a new territorial dispute. Based on one-way geopolitical analysis, most apparently in 2009 Argentina's intention was that of reaffirming the so-called *bioceanic principle* and, if Chile reacted, its government was willing to deal with the consequences.

Chile, at its time, relied in the legal fact that such an exercise was void of efficacy, but time will demonstrate that its diplomacy had, once again, underestimated Argentina's geopolitical determination.

In fact, between 2012 and 2016, CLCL proceeded to revise Argentina´s ECS claim. After that, in April this last year, the centre-right government of President Mauricio Macri[101] celebrated what considered to be the end of the diplomatic and geoscientific *validation* of its country`s territorial sovereignty by, literally, *United Nations*. On the occasion Mr. Macri´s administration celebrated what, in its interpretation, were *the definitive borders of Argentina with the*

[97] UNCLOS Art. 76.10
[98] UNCLOS Annex II Continental Shelf. Art. 9.
[99] CLCS *Rules of Procedures. Annex I. Submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes*. Point 1.
[100] Idem Art. Point 5 a).
[101] With a liberal alliance totally opposed to the Peronist political agenda, Mauricio Macri was President of Argentina between 2015 and 2019.

humanity (sic)[102]. For the opportunity the Argentine government issued new cartography, coins, and post stamps to mark such an achievement (map 9).

This despite that neither the Falkland nor the Antarctic parts of the submission had been revised by CLCS). Whatever the case, and as illustrated in map 2, for *internal purposes* the cartographic representation of 2016 Argentina´s interpretation of CLCC reaffirms the legal and geopolitical depicted in original submission of 2009 (map 2). This, indeed, is incorrect.

Map 9. Map of the Argentine ECS as Buenos Aires asserting the outer limits of the continental shelf as they, allegedly, been *validated by United Nations*. It can be observed that beyond TPA *hammer*, a halfmoon of submarine territory emerges from a projection counted from Staten Island´s continental margin. More recently this legal and geopolitical design has been implemented through diverse law and internal administrative acts.

Despite that Argentine reaffirmed that within its *definitive outer limits* millions of kms2 situated at both sides of latitude 60º south were included, the Chilean government continued ignoring the legal, political, geopolitical, and geostrategic implications associated to such and statement. In order of *not to affect the bilateral relation* with Buenos Aires, Santiago´s diplomacy remained convinced that its 2009 Note to CLCC was *legally enough* to prevent any permanent negative effect from its neighbour´s territorial pretensions over an essential part of *Territorio Antártico Chileno,* as well as over the mentioned area beyond TPA *hammer.* This was strategy was reaffirmed in 2016, when a new Chilean Note to Buenos Aires reasserted that the Argentine interpretation of the results of its legal and diplomatic *ping pong* with CLCC had *no importance at* all over Chile's rights[103].

In time this did not impede Argentina to transform -in early 2020- its own interpretation of the matter into a new law expressly dedicated to establishing -in UNCLOS terminology- the

[102] See: Official report 081/10 of the Ministry of Foreign Affairs of Argentina of 22 March 2016: https://ebras.cancilleria.gob.ar/en/node/24790

[103] The then Chilean Minister of Foreign Affairs affirmed that Argentina´s claim over Chilean territories beyond Cape Horn and Antarctica had *importancia ninguna*. See i.e.: https://www.cooperativa.cl/noticias/pais/relaciones-exteriores/argentina/gobierno-reacciona-a-extension-de-plataforma-continental-argentina-en-la/2016-04-20/171038.html

final and definitive outer limits of Argentina´ sovereignty over the soil, subsoil, and natural resources in the South Atlantic, Antarctica and the Southern Ocean[104].

It was the discussion of this new law what made urgent to object certain fixed points projecting continental shelf beyond TPA´s *hammer*, which, once plotted, made even more apparent that, unilaterally, Argentina had extended the international boundary with Chile.

Additionally, remarks and assertions made by several Argentine authorities and politicians during the process of the debate of the mentioned Argentinean law raised serious concern in Chile.

By mid-May 2020, when Argentina´s *Law on Maritime Spaces* was being discussed by the Senate, the Chilean government concluded that it was time to confront its neighbour´s pretensions beyond the 1984 *hammer*. For this Santiago´s diplomacy enclosed at least one Note recalling three fundamental aspects, notably:

a) on what areas covered by the Antarctic Treaty that Santiago considers to be *Antártica Chilena*, CLCC was not able to *validate* the 2009-2016 Argentine claim[105];
b) on what areas adjacent to TPA 1984 *hammer* overlapping the 200 miles projection counted from Chilean archipelagos, the Argentine pretention was -very simply- *unenforceable*[106]. Beyond TPA Point F *ipso jure* a *Chilean juridical continental shelf* pre-existed (according to UNCLOS Art. 76.1 & Art. 77.3);
c) As a coastal State, Chile has the right to project its continental shelf beyond the *hammer*, as Argentina did in 2009.

As far it is known, Argentina´s government neither responded Chile´s legal and geographical observations, nor modified the outer limits of its continental shelf.

Between *business as usual* while accepting that a new legal dispute was unavoidable

While the legal and geopolitical divergences became public issue, Chile´s government made its last attempt to keep the problem away from media and experts' scrutiny (again, for *not affecting the bilateral relation*). For instance, the problem was not mentioned in an extensive *joint declaration* signed in Santiago on 26 January 2021, during Mr. Fernández official visit to Chile.

Not only that. The said *Presidential Declaration* included a paragraph by which Chile *restated* its support to *the legitimate rights of the Argentine Republic over Malvinas* (Falkland), *South Georgia and South Sandwich Island as well as* -and this is relevant – *to the surrounding*

[104] *Law 27557 Maritime Spaces*, published 25 August 2020. With its Annex indicating the coordinates of the outer limits of Argentina´s continental shelf in:
https://www.boletinoficial.gob.ar/detalleAviso/primera/234033/20200825
[105] *Op cit*. 55 & 56.
[106] In Spanish, *inoponible*, that is, for Chile, the Argentinean act has no validity nor efficacy.

maritime spaces[107]. Because of the geopolitical interpretation of the geoscientific rules employed in the Argentine claim of continental shelf, this Chilean political concession (granted in a context in which both governments agreed to cooperate in a long list of issues of secondary importance) might have geostrategic implications for Argentina´s Antarctic claim over a fundamental part of *Antártica Chilena*[108].

What stated in the *Presidential Declaration* of January 2021 seems to have convinced Buenos Aires government that favourable political conditions existed to continue *reinforcing the maritime cooperation with Chile*. This goal was fully envisaged in a new *National Policy of Defence* published in the Official Bulletin on 19 July 2021[109].

From a wider perspective, this document exemplifies how, in the Argentine geopolitical thinking, the Antarctic Treaty System (and its future) is inevitably linked to territorial pretension over South Atlantic and Southern Ocean British islands. This is even more so after acknowledged the issues listed in Chilean official communication of May 2020, in which it was clear that the *halfmoon* of territory claimed by Argentina beyond the 1984 *hammer* had – in Chile´s view – no effect or whatsoever[110].

Noted this fact, Buenos Aires had to try an alternative approach to, in one hand, keeps its projection beyond the *hammer alive* and, in the other and for the same purpose, maintain its neighbour Eastward Cape Horn meridian. After 2020 a reality check showed Argentina that this aspect of its geopolitical equation had resulted unhelpful, after Chile made apparent that it was decided to employ UNCLOS Part VI to claim areas of ECS from the baselines of Diego Ramírez Islands (see map 10). In such a situation, for maintaining if *bicontinental nature*, Buenos Aires can count only with its alleged continuity through its South American shelf projected along the continental margin of Falkland, South Georgia, and South Sandwich Islands, and from this last spot, follow the curvature of the Arc of Scotia in direction to the adjacent submarine territories of South Orkneys and South Shetland Islands for, only then, reach the continental shelf of the American sector of Antarctica.

In the Western sector, Argentina geopolitical design is even more precarious, because it relies on the validity of the *halfmoon* of submarine territory beyond Cape Horn, an element that, if failed, could become a major blow. The problem was that, if Chile was capable of, in a first stage, imposing its 200 miles projection from Diego Ramírez archipelago beyond Cape Horn meridian and, in a second one, to declare areas of ECS later *validated* by CLCS, then this country was to acquire an area of unsuspected extension across the American sector of the Southern Ocean soil and subsoil.

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[107] Curiously enough, there is no public version of the text signed in Santiago by Presidents Sebastián Piñera and Alberto Fernández.

[108] See our essay *The last tango of the Chilean diplomacy*. In: https://ellibero.cl/opinion/jorge-g-guzman-el-ultimo-tango-de-la-diplomacia-chilena/

[109] https://www.boletinoficial.gob.ar/detalleAviso/primera/246990/20210719

[110] The then Minister of Foreign Affairs Teodoro Ribera concluded that Argentina´s intention to close its ECS process with a new law on continental shelf was reason enough to change Chile´s strategy, and openly confront Buenos Aires territorial pretensions.

By 2020 it became finally obvious for Argentina that that the 2009 decision of claiming areas beyond the 1984 hammer was a risky move indeed. While trying to incorporate several thousands of square kilometres soil to reassert the so-called *oceanic principle* (in the meridian of Cape Horn the Atlantic and the Southern Ocean divides) for blocking any further Chilean projection toward Antarctica, Buenos Aires had in fact established the legal and political precedent to -in this sector of the Southern Ocean- enforce UNCLOS Part VI. Most obviously this was quite an exercise of Peronist wishful thinking that choose to ignore or forget that Chile has never recognized (nor will recognize) the validity of such Argentine geopolitical invention.

In fact and in reality, in legal and political terms there are no impediments for Chile to project at least 200 miles of continental shelf beyond TPA *hammer*, both from some of Cape Horn as from Diego Ramírez Islands (see map 10).

This is entirely possible because, if it is correct that TPA Art. 7 imposes a restriction to Chile´s EEZ Eastward Cape Horn meridian, a similar restriction to the continental shelf (properly speaking) is – simply – omitted by the treaty[111].

Precedents exist to demonstrate that, in International Law, EEZ (UNCLOS Part V) and continental shelf (UNCLOS Part VI) are two different and separated legal and geographical entities. In fact, after the 1958 the Geneva *Conventions* on the Law of the Sea were signed and enforced, these entities were the matter of two different Conventions[112]. The Third Conferences on the Law of the Sea which eventually ended in UNCLOS did not consolidate these entities under one single legal regime. This aspect is called to main element of the dispute arisen from Argentina´s claim over areas beyond TPA *hammer*, where nothing had previously been agreed with Chile. The fact that, in this very same sector of the Southern Ocean, Argentina itself project a *halfmoon* of territory is enough proof of this essential reality.

It is then possible to assert that while no restriction to Chile's continental shelf was agree with TPA (*ergo*, it is not applicable), this country has the right to apply UNCLOS Part VI and project its continental shelf Eastward Cape Horn meridian. While this is the case, the so called *bi-oceanic principle*[113] will become incompatible not only with the oceanographic and geological reality of the Southern Ocean, but also with the implementation of the Law of the Sea. This will be qualitative setback for Argentina´s geopolitical pretensions in the farthest south of the world.

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[111] TPA Art. 7 (final paragraph). *To the south of the end of the boundary (point F), the exclusive economic zone of the Republic of Chile shall extend, up to the distance permitted by international law, to the west of the meridian 67 16.07 West longitude, ending on the east at the high sea.*

[112] *Geneva Convention on the Continental Shelf* and, *Geneva Convention on Fishing and Conservation of the Living Resources of the High Sea*.

[113] A recent take of the matter in: Lacoste, Pablo. ***El concepto de Zonas de Influencia y su aplicación en las relaciones entre Argentina y Chile***. En: Estudios Internaciones. Vol. 33. Nº131/132. (Santiago de Chile, 2000):65-92.

On the same matter is pertinent to recall that in 1977 the British Arbitral Award on the Beagle Channel case plainly rejected Argentina´s argument on the validity of such *bioceanic principle*. Before and after that year, Chile had consistently argued that in this sector of the Southern Ocean there is no such division, because, adjacent to cape Horn area, a circumpolar *Mar Austral Circumpolar* (Circumpolar Southern Ocean) *circulates* following the direction of the needles of the watch. The oceanic and navigational conditions prevailing in subantarctic regions are known to navigators and scientists from, at least, the 17th century[114].

That is why, after carefully examining an extensive Argentine argument, in 1977 all five judges of the International Court of Justice that composed the *ad hoc* tribunal that, under the auspices of HB Majesty, confirmed Chile´s sovereignty over all *islands south the Beagle Channel* also agreed that *there is no real ground for postulating the existence of an accepted "Oceanic" principle (ultimately deriving from utis possidetis, which as such, the Treaty [of 1881[115]] was intended to supersede) figuring as something that must a priori govern the interpretation of the Treaty as a whole*[116].

Despite that a formal agreement had previously made the said international award obligatory[117], the rejection of the *bioceanic principle* was a main reason for Argentina's frontal rejection of the tribunal's decision[118]. It was this decision -it must be remembered- and the insistence of Buenos Aires to replace all legal procedures for a direct political negotiation (shadowed by a permanent use of the threat of the force) what eventually conduced to a long bilateral crisis that, in principle, was solved with TPA signature.

The dispute finally unfolded

In early July 2021 Argentina`s Ministry of Defence published the previously quoted *National Policy of Defence* that, probably anticipating a new dispute beyond TPA *hammer*, proposed *to reorient* the cooperation with Chile -its second regional priority after Brazil- establishing certain *shared geographical spaces*. In practical terms the Argentine Ministry of Defence asserted that, first, the Magellan Strait and, second, what now it calls *Mar de Hoces* (in actuality, the American sector of the Circumpolar Southern Ocean or, in English, *Drake Passage*), were to be areas in which Buenos Aires should share *control* of Chilean territories

[114] See *i.e.*: *Del Descubrimiento del Pasaje de Enrique Brevers* (Hendrick Brouwers). In: Seixas de Lovera, Francisco. *Descripción Geographica y Derrotero de la Región Austral Magallanica*.)Madrid, 1690):25v-27v.

[115] Boundary Treaty between Chile and Argentina, 1881. See Arts. 2 & 3 in: https://www.dipublico.org/3634/tratado-de-limites-con-chile-de-1881/

[116] *Beagle Channel Arbitration between the Republic of Argentina and the republic of Chile. Report and Decision of the Court of Arbitration*. (17 February 1977):120. Available in: https://legal.un.org/riaa/cases/vol_XXI/53-264.pdf

[117] See: *Arbitration Agreement or Compromiso*. In: Case concerning a dispute between Argentina and Chile concerning the Beagle Channel. (New York, 1977):64-71. Available in: https://legal.un.org/riaa/cases/vol_XXI/53-264.pdf

[118] On 1977 Argentina´s Junta declared *incurable void* the Court of Arbitration's Award. This, despite that the Treaty of Arbitration signed in London in July1971 clearly established that such decision was mandatory and final for both countries. Argentina`s rejection provoked a crisis that conduced both countries to the very edge of total war.

under the dependency of authorities based in the city of Punta Arenas, capital of Chile´s farthest south.

This, most apparently, presents many different legal and political *inconveniencies*[119].

In perspective, however, Argentina´s new Policy of Defence seems to be a damage control attempt (*sharing* rather than *disputing* spaces over which legal and geographical rights are inexistant or at best diffuse) in view that, by then, it was clear that a Chilean submission on Southern Ocean continental shelf to CLCC was expected by the end of 2021. Chilean data and cartography were to demonstrate that, legally and empirically, Chile`s ECS in the Southern Ocean was to impose a massive geographical barrier to Argentina's *continuity toward Antarctica*.

In fact, in early August 2021, Buenos Aires' concept of *shared spaces* southward the Magellan Strait forced the Chilean government to formally reject such a *possibility*. Santiago used the occasion to -again- recall its neighbour that, on what Antarctica was concerned, CLCC had no chance to validate any continental shelf claim beyond 60º South, at least meanwhile the Treaty of Washington of 1959 was in force (as it is the case). Secondly, on the matter of the legal regime applicable to navigation in the Magellan Strait, Chile restated that this interoceanic passage is in its integrity Chilean territory and, also, again rejected Argentina´s restrictions to free navigation of British flag vessels, when they were sailing from the Falkland and/or South Georgia Islands toward Punta Arenas. Such restrictions are not only contrary to the said principle of *free navigation* (granted by International Law), but contrary to obligations acquired by Buenos Aires with the Boundary Treaty of 1881[120], and relevantly, with 1984 TPA[121]. These *clarifications* announced that a political and geopolitical Chilean *change of mood* was effectively in process.

For what matter this *change of mood* started to occur in May 2020, when, as mentioned before, in Santiago became apparent the Argentine Senate intention was to pass a law on ECS that was to transform Buenos Aires' *sovereignty* over Chilean submarine territories in a *fait accompli*[122].

It was this reality what ultimately moved Chile's government to articulate a proper response to Argentina`s action in the farthest south. First, under Minister of Foreign Affairs Teodoro Ribera, the Congress passed an Antarctic Law (*Estatuto Antártico*)[123], which, at the time of

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[119] See *i.e.*: Guzmán, Jorge G. & Kouyoumdjian, Richard: https://athenalab.org/chile-frente-a-la-pretension-argentina-de-exploracion-estudio-y-control-conjunto-del-estrecho-de-magallanes-y-el-mar-austral-chileno/

[120] Boundary Treaty 1881. Art. V. *The Magellan Strait is perpetually declared a neutral passage, open to free navigation od al flags of all nations*.

[121] TPA 1984. Art. 10 (final paragraph). *The Argentine Republic undertakes to maintain, at any time and in whatever circumstances, the right of ships of all flags to navigate expeditiously and without obstacles through its jurisdictional waters to and from the Strait of Magellan*.

[122] Law 25.557 July-August 2020.

[123] Law 21.225 September 2020. In force since early 2021. Available in: https://www.bcn.cl/leychile/navegar?idNorma=1149631

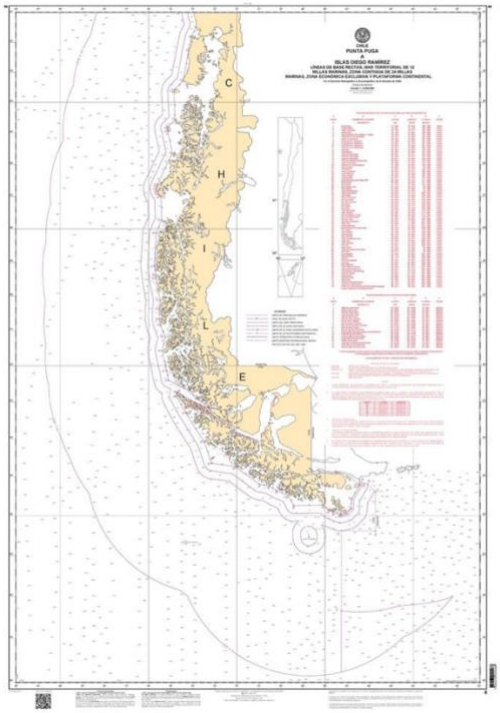
restating the country's commitment with the Antarctic political and scientific cooperation, asserted that a fundamental aspect of the law was that of reinforcing Chile's Antarctic rights and activities. For the purpose, the *Estatuto* is to be enforced through 12 *reglamentos*[124] which, at the time of enforcing the Antarctic Treaty System regulation, *harmonically* will enforce Chilean law. Of importance is that this *Estatuto Antártico* restates several aspects of political and geopolitical significance, notably:

1) *Antartica Chilena* does not result from a *territorial claim*, strictly speaking. In 1940 Chile *only determined* the outer Eastern and Western limits of its Antarctic possessions based on inherited rights (53ºW-90ºW) and, equally relevant, based on other rights emanated from the historical presence of its citizens in the American sector of Antarctica (*i.e*. sealing and whaling since 1820);
2) Because this essential reason, the *Chilean Antarctic Territory* do not end in 60ºSouth, namely, it includes maritime and land spaces in and out the area of application of the Antarctic Treaty (signed 19 years later). *Antártica Chilena* has no northern limit and, in Chile's internal political division, it corresponds to *Provincia Antarctica* which extends from the Beagle and Cockburn Channels to the South Pole[125].

From both this angle, the 2009 Argentine *halfmoon* has been claimed within Chile's Antarctic Province (see map 4), so a Chilean formal invocation of UNCLOS regulations on continental shelf (legal and geoscientific) was, necessarily to overlap with the *halfmoon* projected from Staten Island's continental margin. Of course, the Argentine diplomacy is aware of this fact (in Punta Arenas is based a General Consulate of Argentina).

This final Chilean reaction occurred by the end of August 2021, when a Presidential Decree was published containing an *updating* of the outer limits of Magellan Region`s legal continental shelf of 200 miles in which a projection from Diego Ramírez and Barnevelt Islands officially overlapped Argentina's ECS (map 10).

[124] Regulations.
[125] See Art. 12 of the Decree 1-18715 of 9 June 1989. *Establishes the limits of the Regions of Chile.*



Map 10. Marine Chart 8B by the Chilean Navy Hydrographic and Oceanographic Service, SHOA (27 August 2021). This chart updates the 200 miles continental shelf projection counted from Diego Ramírez and Barnevelt Islas (situated Southwest and Eastward Cape Horn, respectively). It is apparent that the Argentine *halfmoon* resulting from ECS projected from Staten Island continental margin has been overlapped.

Because the boundary dispute was finally apparent, the Argentinean government immediately accused Chile of both *expansionist vocation* and the *violation of the TPA* (Chile has *crossed the line* of Cape Horn meridian). President Alberto Fernández even mentioned his intention to request the intervention of the International Court of Justice[126]. These remarks were later included in a *diplomatic note of protest* enclosed to the Chilean Ministry of Foreign Affairs[127].

In Santiago, President Piñera responded that, has Argentina has done in 2009, in 2021 Chile has exercised its Coastal State rights updating the outer limits of its legal continental shelf. He did not respond President Fernández's accusations and declared that time to talk about the matter has come. All Chilean political parties supported Mr. Piñera' statement[128].

From a wider aspect, Argentina's nervous reaction to Chile's update of its legal continental shelf in the Southern Ocean not only formalizes a complicated boundary dispute, but also illustrates the fragility of Argentina's geopolitical design in the farthest south of the world. As explained, this country's *bet* for territories of the South Atlantic, Antarctic, and Southern Oceans (maintaining Chile westward the Cape Horn meridian) is sustained in *its own interpretation* UNCLOS Art. 76 characterized by:

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126 See i.e.: https://www.infobae.com/politica/2021/08/31/alberto-fernandez-aun-no-definio-su-respuesta-diplomatica-a-chile-que-anexo-por-decreto-6000-kilometros-cuadrados-que-pertenecen-a-la-argentina/

127 See i.e.: https://www.europapress.es/internacional/noticia-argentina-protesta-chile-ampliacion-plataforma-continental-patagonia-20210906224031.html

128 See i.e.: https://ellibero.cl/opinion/jorge-g-guzman-plataforma-maritima-chile-regresa-a-su-tradicion/

a) A maximalist implementation of the rule of extension of the *continental margin*[129];
b) A consistent use of the rule of 60 miles of continental shelf counted from the outer limit of the continental margin[130];
c) In the American sector of the Southern Ocean, the assumption that TPA restricts Chile's continental shelf, because, for Argentina`s interest, EEZ and continental shelf soil and subsoil are the same, that is, that in this respect UNCLOS provision are identical.
d) This is, indeed, based in Argentina's assertion that, as mentioned before, in one hand, in Cape Horn meridian the Atlantic and Pacific Oceans divide and, in the other, the while itself is restricted to the Atlantic, Chile is to the Pacific.
e) While this -according to Buenos Aires- is a *legal fact* stipulated in TPA, Diego Ramírez Island *legal continental shelf* overlapping Staten Island's ECS is contrary to the said bilateral treaty.

In Chile's interpretation, the problem is, of course, different. Notably:

a) EEZ and continental shelf are two different and separated entities of International Law. During the III Conference on the International Law of the Sea they were negotiated by different commissions and groups, so they correspond to two separate Parts of UNCLOS, namely: *Part V Exclusive Economic Zone* and, *Part VI Continental Shelf*;
b) Even before UNCLOS became enforceable, international tribunals have understood continental shelf and EEZ as two distinct and separated entities of International Law of the Sea[131];
c) Despite TPA states that the area then delimitated corresponds to the *Mar de la Zona Austral,* which constitutes the final and definitive *confine* between both countries, anyway Argentina, unilaterally and for about 100 kilometres along Cape Horn meridian, in an unconsented manner extended the southernmost border with Chile. This is equivalent to assert that, beyond TPA *hammer*, no obligations with Chile exists (so Chile has no obligations with Argentina). If this is the case, and Argentina is permitted to use UNCLOS Part VI to declare ECS projected from Staten Island, so Chile is also permitted to use the same provisions.
d) TPA Art. 9 imposes certain restrictions to Diego Ramírez Island's EEZ, since this International Law of the Sea such legal entity is distinct to that of the continental shelf (both of legal of 200 miles and extended beyond that distance). However, the same restriction applicable to the projection of Chile's submarine rights beyond the *hammer*.

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[129] UNCLOS contains an *enlarged concept* of continental margin, stating that *the continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise* (Art. 76. 3). This means that the outer limit of the continental shelf can be placed well beyond the foot of the slope, properly speaking.

[130] UNCLOS Art. 73.3. (ii) *a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope*.

[131] An early case on the matter, submitted before UNCLOS was signed, but awarded after this Convention was agreed, is in the case of Canada *versus* United States for the delimitation of fishing areas, in one hand, and continental shelf, in the other. Although in the end the International Court of Justice decided on one single boundary line, before the Tribunal and both Parties agreed that *fisheries areas and water column* (now EEZ) and *continental shelf* are two different and separated legal entities. See: Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America):160-162.

e) In more simple words, if Argentina 2009 ECS claim is based in the assumption that the *hammer* was not a final *confine*, now Chile agrees that it is not. For this same reason, map 10 indicates a legal difference between and area of both EZZ and 200 miles continental shelf (until Cape Horn meridian), and an area of *legal continental shelf*, only (Eastward Cape Horn meridian).

In view of the Chilean argument, Argentina has been forced to resort to an argument of procedure, namely, that while after 2009 Chile presented no direct objection to the fixed points from which the *halfmoon* adjacent to TPA's *hammer* emerges, then *Chile has consented* on the validity of such pretension. More precisely, Buenos Aires adds that, between 2012 and 2016, its ECS submission was revised by CLCC, and Chile presented no observation or whatsoever. In origin this is incorrect.

As indicated before, with the Note encompassing its 2009 *Preliminary Submission*, Chile recalled that, UNCLOS in general, and Art. 77, provide, inter alia, that the Coastal State rights over the continental shelf do not depend on any express proclamation[132]. Applied this reserve to Diego Ramírez Island continental shelf case means that, as indicated, Chile rights in the area preceded any Argentine ECS claim.

In principle this is even more the case, if we consider that the mentioned Article effectively provides that *the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation*[133].

Additionally, in May 2016, referring to Argentina's interpretation of the results of its process of validation of its 2009 submission, a Chilean Note to the UN General Secretary (and CLCC) restated that, *concerning submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes,* the Commission *was not in a position to consider or qualify those parts of submission that are subject to dispute (CLCS/64, paras. 76 and 77 and CLCS/76, para. 57)*[134].

None of these arguments prevented Argentina to transform its interpretation of CLCC *recommendations* into a national law in which the *halfmoon* adjacent to 1984 *hammer* became *Argentine territory*.

From a wider point of view, the dispute unfolded with the update of Diego Ramírez Islands 200 miles continental shelf needs to be understood as an equally logical Chilean response to a unilateral action motivated by pure Argentine geopolitical interest. Again, if in 2009 this country was willing to accept the political and legal effects of such an action, now must face the consequences.

[132] https://www.un.org/depts/los/clcs_new/submissions_files/preliminary/chl2009note_e.pdf
[133] UNCLOS Art. 77.3.
[134] Chilean Note to the UN General Secretary of 25 May 2016. Available in: https://www.un.org/depts/los/clcs_new/submissions_files/arg25_09/chl_re_arg_2016_e.pdf

An inspection of the marine geology of the submarine area extending south and southeast TPA *hammer* indicates that, in principle, Chile´s *geoscientific continental shelf* in the Southern Ocean may continue well beyond 200 miles.

Even more, only in legal terms in this area Chile`s 200 miles continental shelf can relate to certain "marine elevations"[135], like, for example, the Submarine Mount Sars[136]. This elevation lies within Diego Ramírez Islands 200 nautical miles allowing, for instance, to apply UNCLOS Art. 76.5. stating that *the fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres* (see map xx).

In fact, Mount Sars is not the only *submarine elevation* possible to be included within a Chilean *continental shelf*. This is relevant, because, in a wider view, UNCLOS Art. 76 geo-scientific formulas can -at least theoretically- project the Chilean ECS well beyond 60º south (the Antarctic Treaty area) and, also, project Chilean sovereignty farther East, toward 53ºW marking the Eastern border of *Antártica Chilena*[137]. If this might be the case -once again- Argentina´s geopolitical and geo-legal doctrine might have found a *structural stop*.

Conclusions

In a geopolitical and geostrategic interpretation, Chile´ submarine economic sovereignty projected from Diego Ramírez Islands represents an essential threat to the entire Argentine *bicontinental* design in the South Atlantic, the Southern Ocean and Antarctica. This is even more so if Chile can articulate an ECS similar to the Australian (2004) and Argentine (2009). At least theoretically it is possible, that maximizing UNCLOS Art. 76 geoscientific formulas, Chile can connect areas of soil and subsoil beyond the *confine* that in 2009 was ignored by Argentine and link Diego Ramírez Islands projection with that of the coasts of South Shetland Islands and *tierra firme* Antarctica.

For Argentina this would be simply catastrophic.

It is already known that not only bathymetric, but seismic data indicate that beyond the 1984 *confine*, sedimentary processes and *marine elevations* could allow Chile's ECS to extend across

[135] On the matter see: CLCC/11 Scientific and Technical Guidelines (13 May 1999):7.1-7.3. Available in: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/171/08/IMG/N9917108.pdf?OpenElement.
[136] *Circa* 59º 42´ South 68º 52 West. On the matter see: Robinson, Laura *et al*. *Historic perspectives on climate and biogeography from deep-sea corals in the Drake Passage*. Cruise Report. RVIB Nathaniel Palmer, 2011.

[137] See i.e. Bohoyo, F. et al. ***Bathymetry and geological setting of the Drake Passage*.** British Antarctic Survey & Instituto Geológico y Minero de España (Cambridge, 2017), and; López-Quiroz, Adrian et al. ***Geomorphology of Ona Basin, Southwester Scotia Sea (Antarctica). Decoding the spatial variability of bottom-current pathways***. In: Marine Geology. Vol. 422. (2020).

the American sector of the Southern Ocean, north and south the area of application of the Antarctic Treaty. Considered this, the historically alleged Chilean geographical and environmental continuity between South American islands and *Antarctica Chilena* could become legally and scientifically demonstrated. Again, this would mean a major blow to Argentina`s geopolitical ambitions.

Given that the Argentine government has already accused Chile of *aggressive behaviour, expansionist vocation* and *violation of TPA*, the chances for a direct agreement on the matter are slim. In political and diplomatic terms, the Argentine reaction to Chart 8B reproduced in map 10 has narrowed to a minimum the chances of success of direct diplomatic consultations.

Most probably both countries diplomacies will verify that *they agree that there is no agreement* and, accordingly, will resort to one of the several systems of peaceful settlements of disputes available.

The first of them is of course that offered by TPA itself. Its Art. 4 establishes that, in case of a controversy, both countries will resort to direct contacts and, if after 4 months these contacts do not conduce to any satisfactory solution, any of the Parties could invite the other a legal mechanism for a peaceful solution of the difference.

Next, Art 5 indicates then the Parties will follow the procedure established in Annex I to the Treaty, which offers a *road map* that, in a first step, considers a *mechanism of conciliation*[138]. If this fails, then the Parties will continue to mechanism of arbitrage. In this last case both governments should agree a tribunal composed of 5 judges. If there is no agreement on judges (very possible), the Parties should ask the Swiss government to designate a tribunal of arbitrage[139].

An alternative would be to resort the *International Tribunal of the Law of the Sea* ((ITLOS). On the matter it is important to note that, upon UNCLOS ratification(1997), Buenos Aires' government stated: *In accordance with the provisions of [UNCLOS] article 287, the Argentine Government declares that it accepts, in order of preference, the following means for the settlement of disputes concerning the interpretation or application of the Convention: (a) the International Tribunal for the Law of the Sea; (b) an arbitral tribunal constituted in accordance with Annex VIII for questions relating to fisheries, protection and preservation of the marine environment, marine scientific research, and navigation, in accordance with Annex VIII, article 1. The Argentine Government also declares that it does not accept the procedures provided for in Part XV, section 2, with respect to the disputes specified in article 298, paragraph 1 (a), (b) and (c).*

[138] TPA Annex I. Chapter I. *Procedures of Conciliations Provided in Art. 5 of the Treaty of Peace and Friendship*.
[139] TPA Annex I. Chapter II. Procedure of Arbitrage Provided in Art. 6 of the Treaty of Peace and Friendship.

Relevantly, this last paragraph includes disputes *relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties*. A complicated matter that makes equally complicated the submission to ITLOS a dispute originated in the Argentine 2009 ECS pretentions beyond TPA *hammer*.

A third alternative would be that followed in 2011 by the Philippines in regard the so-called *China`s historical rights* over the continental shelf in the South China Sea[140]. In this case Manila's government resorted to the UN Secretary General, whom, at the time, designated the *Permanent Court of Arbitrage* as the tribunal to settle the difference[141]. Though the Chinese government refused to recognize the dispute, anyway in 2014 the Court ruled in favor of the Philippine contention[142].

Finally, in his initial reaction to Chile's continental shelf update, President Alberto Fernández declared he was inclined to bring his neighbor to the *International Court of Justice*[143]. After this announcement some politicians recalled that because Argentina never ratified the American Treaty on Pacific Settlement (also called *Pact of Bogotá*)[144], Buenos Aires' diplomacy cannot resort to the mentioned international tribunal. However, if it is correct that Argentina never ratified the Pact of Bogotá (because rejected the obligatoriness of submitting a controversy to, first, good offices, mediation and conciliation, and later, to a juridical process, namely, the International Court of Justice[145]), it is also true that for the sole solution of the issue disputed with Chile, in its condition to UN Member State, Argentina is free to -at any time- apply to the International Court of Justice competences by just following the procedures established in the *Statute* of this international tribunal (Art. 35.1)[146].

This is, however, just one side of the problem.

A catastrophic scenario in the Southern Ocean will involve the entire Argentine society. It happens that during the last decades Argentina`s primary, secondary and university education system have promoted a national self-image that includes, among other, the following preconceptions:

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[140] An introductory reading in: Malik, Mohan. ***Historical Fiction: China's South China Sea claim***. In: World Affairs, Vol 176 Nº1 (2013):83-90.

[141] See i.e. Noyes, John E. ***IN RE Arbitration Between The Philippines and China. PCA Case Nº2013-19.*** In: The American Journal of International Law. Vol. 110, Nº1. (Cambridge, 2016):102-108.

[142] Submissions, Award and other documents in: https://pca-cpa.org/en/cases/7/

[143] See: https://www.infobae.com/politica/2021/08/31/alberto-fernandez-aun-no-definio-su-respuesta-diplomatica-a-chile-que-anexo-por-decreto-6000-kilometros-cuadrados-que-pertenecen-a-la-argentina/

[144] English text in: http://www.oas.org/en/sla/dil/inter_american_treaties_A-42_pacific_settlement_pact_bogota.asp

[145] Pact of Bogotá, Arts. XXXI and XXXII.

[146] Available in: https://www.icj-cij.org/en/statute.

a) Argentina is, *in nature*, a *bicontinental* country which, *per se,* has granted extensive historical and legal territorial rights in the South Atlantic and Antarctica[147];
b) This includes *historical rights* over the Falkland and South Georgia, and South Sandwich. From 2009 these *rights* are sustained in the implementation of UNCLOS Art. 76 and on *the validation by United Nations*;
c) From 2009 UNCLOS also sustains Argentina's Antarctic claim. This because, in Buenos Aires' take, the said British islands interface with South Orkneys and South Shetland archipelagos and, eventually, with the *Argentine sector of Antarctica*, and;
d) Chile is *a country of the Pacific* which, most conveniently for Argentina`s interest, ends in Cape Horn meridian.

While in 2021 legal, political, and geographical facts do not coincide with these assumptions, Argentina is -once again- to be confronted with a sudden exercise of realism. Experience indicates that, in these cases, Argentina's way to *escape forward* is bringing back the threat of the *external enemy* (in this case, Chile and/or the UK). Considering the present complicated economic, financial, and social internal situation (which, most possibly, will prolong for the rest of the decade), the *external threat* argument will be an almost irresistible temptation for any given Argentine government facing a complicated internal scenario.

It cannot be discarded that, in such scenario, Argentine Government could try to put together the *Chilean threat* in the West, with the unsolved Falkland, South Georgia and South Sandwich Islands problem, in the East. In both these cases an eventual legal defeat in an international arbitrage will mean the end of the idea of the *bicontinental nature* of the country. This would of course be traumatic for the entire Argentinean society, and the consequences are -at this stage- hard to imagine.

Before that, it is highly possible that Buenos Aires would become even more belligerent with respect the *old Antarctic problem*, given the fact that no Argentine government can allow itself to *release the pressure* over the Falkland Island, despite the that it is increasingly apparent that this is not, anymore, a "colony", but a legal entity in many ways closer to Canada, New Zealand or Australia. This is another *threat* to Argentina`s geopolitical project in the farthest South of the world.

For Chile, together with the still open issue of the Patagonian Southern Ice field (in principle demarcated in 1902 by an arbitrage)[148], the continental shelf problem beyond TPA *hammer* will most certainly dominate the bilateral agenda for at least the next 2 to 5 years.

[147] For instance, since 2010 and by law, in Argentina is, at all levels of the educational system, obligatory to present a map in which the not only the *bicontinentaly* of the country is represented, but to show the exact proportions between South American Argentina in respect Antártida Argentina. This kind of illustration includes Falkland and other British islands as Argentinean territories. See Law 26.651. Available in: https://www.argentina.gob.ar/normativa/nacional/ley-26651-175020/texto

[148] See i.e.: https://ellibero.cl/opinion/cedomir-marangunic-y-jorge-guzman-el-acuerdo-de-1998-sobre-el-campo-de-hielo-patagonico-sur/

In what the Antarctic Treaty System and the Antarctic *modus vivendi* is respected, a new dispute in the Southern Ocean between two Antarctic powers represents an obvious threat to the *life expectancy* of the Treaty itself.

If, in one hand, during the 2040s the Treaty would again be *revised*, in the other the example of Argentina's 2009 Note to CLCC (in which the 2004 gentlemen's agreement regarding that no ECS claim should be revised *by the time being* by CLCC was omitted) represents a large shadow over the viability of the political and scientific polar cooperation beyond that decade. It cannot be discarded that, if the Argentine internal situation demands extreme measures, once again, this country may try to be recognized as a proper *Antarctic Coastal State*. This will indeed be the end of the *Pax Antarctica*.

In Chile's case, as stated in the 2020-2021 *Estatuto Antártico*, things are different. For Santiago a main political goal is to protect the Antarctic Treaty System, in the understanding that the *statu quo* in place since 1959-1961 entirely satisfies its national interest. For decades Santiago's governments (the plural is significant) have established that the preservation of the said *statu quo* plainly responds not only to national security needs, but to Chile's southernmost territories environmental security. This is a main difference between Chilean and the Argentinean approaches.

In whatever the case, a *new and old Antarctic problem* has just unfolded.

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