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The Antarctic System, a Laboratory for International Inspection Regimes

Raphaël Maurel

Centre de Recherche sur le droit des Marches et des Investissements Internationaux (CREDIMI), University of Burgundy, Dijon, France

Email address:
raphael.maurel@u-bourgogne.fr

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Abstract: This research paper is a continuation of research conducted in 2018 at the Center for Study and Research of the Hague Academy on international inspections from a historic perspective. It focuses on how the drafters of the Antarctic Treaty resurrected a system of inspection that had been relatively forgotten since the great peace treaties of 1919, in the service of avoiding new global conflicts. While it is the starting point for the revival of international inspection, this model has not been extended in the same way throughout the Antarctic system or beyond. For example, a form of inspection was used in 1967 to guarantee the peaceful exploration of extra-atmospheric space; but it was not adopted in the same terms and the Antarctic's inspection remains quite a unique system. The article questions the reasons for this limited transposition, at a time when inspection is experiencing a revival of interest in international sanitary law or in corporate vigilance in Europe with respect to human rights. After a contextualization, it highlights the successes of the Antarctic inspection regime before considering, from a more forward-looking angle, the difficulties and criticisms to which the regime is subject. It faces in particular the evolutions of the geopolitical context of the Antarctic, less focused on nuclear issues than on environmental and touristic problematics.

Keywords: Antarctic, International Law, International Inspection, Sovereignty, Cold War, Guarantee, Peacekeeping

1. Introduction

In 1959, the Antarctic Treaty broke new ground by creating an inspection system that was unique at the time: "*[...] 3. All areas of Antarctica, all stations and installations, all equipment therein, and all vessels and aircraft at points of landing and embarkation of cargo or personnel in Antarctica, shall be open at all times to inspection by any designated observers*" [1].

Defined - approximately - as "*surveillance or observation carried out on the spot by persons vested with international functions with a view to verifying the conformity of certain acts, a situation, or the exercise of powers with a rule, a commitment or the requirements of the international order*" [2], although the terminology in this area is "*fluctuating and uncertain*" [3][1], international inspection is often confused with other similar mechanisms. One thinks in particular of the investigation, which is a jurisdictional mechanism provided for, for example, by Article 50 of the Statute and Article 67 of the Rules of the International Court of Justice. While the purpose of an investigation is to establish facts with a view to possible legal proceedings[2] or is part of a general framework, this is not the case with an inspection. The latter is rather a non-contentious procedure aimed very often, and precisely, at avoiding conflicts between sovereign powers. For the purposes of this paper, we shall retain a broad definition of international inspection. It therefore includes all non-jurisdictional mechanisms stemming from the international legal order that provide for the sending, by one or more subjects of international law, of persons to a place not subject to their jurisdiction with a mandate to verify on the spot the conformity of facts, procedures, installations or events with previously identified norms.

These original and relatively unexamined regimes in international law have their origins in the fight against piracy, so it is difficult to date their emergence precisely. The Antarctic Treaty therefore does not totally innovate by "inventing" an inspection system. However, in 1959 and in a tense geopolitical context, this regime was resurrected. Having fallen somewhat into disuse after the failure of the treaties providing for it after the First World War, the international inspection regime appeared to be a mechanism

that allowed the sovereignty of the states involved to be respected, while at the same time allowing mutual control of activities on the Antarctic continent. In other words, the Antarctic inspection regime was from the outset a factor in maintaining peace between the states concerned, which a historical analysis of the mechanism confirms. History subsequently shows that the "Antarctic regime" has been a veritable normative laboratory whose results have been exported, with varying degrees of success, depending on the geopolitical factors that have sometimes limited its adaptation or, on the contrary, have favoured it.

Sixty years after the adoption of the Treaty, it is possible, if not necessary, to take stock of the Antarctic inspection regime both internally and externally. From this perspective, several sets of questions arise. How does international Antarctic inspection work in practice? Has this regime been able to serve as a reference in other sectors? Conversely, why has this seemingly effective regime not been multiplied, adapted and disseminated in a very broad manner, particularly for the international management of other areas and for dealing with new global issues? Is this regime, in the end, effective? Is it adapted to contemporary constraints? Furthermore, can the Antarctic inspection regime of 1959 serve as a support for future peacekeeping? This paper aims to answer these questions in two main ways. It is therefore possible to look back at the real successes of the Antarctic inspection regime (2) before considering, from a more forward-looking angle, the difficulties and criticisms to which the regime is subject (3).

2. The Laboratory Showcase: The Novel Design of an Effective Inspection Regime

As mentioned above, the Antarctic system allows for a form of resurrection of international inspection, which has been relatively forgotten for several decades (2.1). The 1959 Treaty thus constitutes the starting point for a renewed model of inspection, adapted to the context of peace and therefore exportable to other international situations (2.2)[3].

2.1. Product Design: The Resurgence of Antarctic Treaty Inspection

The circumstances of the choice to use inspection under the Antarctic Treaty, in the absence of relevant precedent, necessarily raise questions. A brief historical overview allows us to assess the innovative conceptual contribution of 1959, although it is not possible to determine precisely *how* the idea of using inspection came about during the debates preceding the adoption of the Treaty.

As mentioned, international inspection first appeared in customary form in the law of the sea. The "right of visit" and pursuit of ships suspected of piracy or smuggling is thus well established in the 19th century [6][4], and authors generally date it to the 15th century [7][5]. However, it is possible to detect signs of this as early as the 13th century [8][6]. Outside the context of piracy, it appears that mechanisms to ensure the proper implementation of measures agreed or imposed as a result of a conflict have also been incorporated into some - rare - peace treaties, at least since the 17th century. Thus, the Treaty of Turin of 1696 provides for the possibility of sending a "*Commissaire*" to witness the destruction of the fortress of Pignerol imposed by Louis XIV as a precondition for the return of the town to the Duke of Savoy [9]. This clause being exceptional, it was not until a century later, with the Treaty of Paris of 1796 between the Directory and Sardinia, defeated by Bonaparte, that the verification of the demolition and destruction of several fortifications, at the expense of the Sardinian King, was entrusted "*to the diligence of the commissioners appointed for this purpose by the Executive Directory*" [10]. A century later, a protectorate treaty provided that "*a commission of three members, appointed by the governor of Mayotte, shall proceed each year to the verification and auditing of the accounts presented by the resident and the accountant*" [11, 12]. In parallel with these measures and the right to reciprocal inspection of ships to combat piracy, smuggling and then trafficking, a right to verify the absence of offences by searching fishing vessels also appeared towards the end of the 19th century [13][7]. Generally speaking, the acceleration of trade in the 20th century gave rise to a right to '*verify*': that a ship is healthy [14], that livestock is not diseased [15], that parcels containing returned war trophies are not damaged [16], *etc.*

Beyond technical verifications, inspection, from the beginning of the 20th century, responds to "*the elementary idea that the surest way to enable the control organ to assess the behaviour of a State is to enable it to find out for itself by visiting the territory in which it is operating*"[17]. Used as a *guarantee* mechanism in international treaty law, it is often not referred to as an "inspection", although it has the characteristics of one. This is particularly true of the Treaty of Versailles, which created the Allied Control Commissions. Thus, "*[t]he Interallied Control Commissions shall be specially charged with supervising the regular execution of the deliveries, destructions, demolitions and dismantlings, provided for the German Government by the present treaty*" [18]; they "*shall have the power, as often as they deem useful, to visit any point on German territory*"[18]. This model was reused without modification in the Treaties of Neuilly and Sevres [15, 19], and with modifications in the Treaty of Tartu [20].

These treaties mark the development of a renewed functional conception of inspection - regardless of its official designation -: it is no longer simply a matter of verifying the absence of a violation, but of creating *peacekeeping* mechanisms likely to recreate confidence between the winning and losing parties of the conflict. Given the failure of international society and these mechanisms to prevent the outbreak of the Second World War, it seems consistent that inspection was not specifically invoked thereafter.

It was thus after a relative absence that the Antarctic Treaty revived inspection, in the geopolitical context of the Cold War and the arms race, which was as unprecedented as it was complex. It should be briefly recalled that while several states

have made sometimes contradictory territorial claims to Antarctica, twelve state[8] agree on the need for an international conference to study the future of the continent. Key issues in the discussions include maintaining international peace and facilitating scientific research in Antarctica. By reaching a solution acceptable to all, the Parties to the 1959 Treaty laid the foundations for modern inspection regimes, which were only "reinvented" by the semantic breakthrough of the World Bank's "*Inspection Panel"* in 1993 [21][9].

Article 7 of the Antarctic Treaty, which sets this solution in stone [1], was certainly the subject of debate during the preparatory work. However, it is difficult to make statements on this point. The preparatory work is difficult to access: neither the Secretariat of the Treaty, based in Argentina, nor the *Office of Ocean and Polar Affairs* of the United States Department of State, which is the Treaty's depositary, have access to it[10].

The most we know, thanks to the doctrine and the rare documents accessible and preserved in certain archives, is that the inspection system was considered essential from the outset, and this as early as the exchanges of notes in preparation for the Washington Conference [22]. The media, the only easily accessible secondary sources today, relayed this information at the time [23], especially since the question of disarmament and how to ensure it was central to the exchanges between the United States and the USSR. Thus, it is possible to read in the press during the Conference that "*[t]he Americans would be extremely favourable to the principle of aerial inspection in order to prove that it would be the most effective on other territories. The demilitarisation or neutralisation of Antarctica would be guaranteed by the principle of free access either by observers who are nationals of the twelve countries which have interests in this continent, or by international observers accredited for this mission by the organisation of the Twelve*" [24]. It is also known that the proposal, which originated in the United States [25] and was immediately announced as being difficult for the Soviets to accept, was described by the Japanese delegation as "*such an advanced and progressive measure*", among others, in its closing speech [26].

The geopolitical context shows that the adoption of Article 7 was not self-evident, especially since the United States had, in 1958, proposed in vain the establishment of a similar inspection regime in the Arctic. This proposal was rejected by a Soviet veto [27]. For this reason, the international control regime in the Antarctic is unanimously considered a precedent that should serve as a model for other areas.

2.2. The Successful Export of the Antarctic Inspection Model

Firstly, the Antarctic inspection regime has been reused within the Antarctic system itself, although not all of the conventions and protocols of the Antarctic system adopt it. For example, the 1972 Convention for the Protection of Antarctic Seals only states that states *may decide* to establish such a mechanism [28] [11], while the 1980 Canberra Convention provides in article 24, 2, (a) that the Commission for the Conservation of Antarctic Marine Living Resources shall organise an observation and control system that includes inspections of vessels [29]. In contrast, article 14 of the 1991 Madrid Protocol fully adopts the inspection system [30].

It is above all beyond the Antarctic System that the inspection regime called for by the Americans has met with the greatest success. As the press pointed out in 1959 in connection with the Treaty of that year, '*a first international system of inspection and control has been approved: any of the twelve signatory states of the treaty may send observers to any point in the area covered by the agreement to verify strict observance. Although the region for which this treaty was signed is still most deprived, the unanimity with which the twelve participants ratified the establishment of a system of effective disarmament control sets an encouraging and useful precedent that could serve as a model for other regions of the Earth or for man's future extraterrestrial conquests*" [31]. This has indeed been the case.

The 1959 inspection system is thus seen as a 'precedent' for arms control [32], in line with US predictions and claims [33][12]: "*[i]t is noted in Washington diplomatic circles that the acceptance of inspection and observation in the Antarctic by the United States and the U.S.S.R. bodes well for a more far-reaching agreement on disarmament between the great powers*" [34]. In this respect, the Antarctic inspection can be seen as the founding regime of a successful mechanism that has itself undergone evolution and generated new models. Indeed, there are many universal and regional uses of disarmament-related inspection, all of which have been inspired in one way or another by the Antarctic regime. At the universal level, the Security Council has been able to impose this system on several occasions [13]; most famously, the International Atomic Energy Agency (IAEA) [14] and the International Organisation for the Prohibition of Chemical Weapons (OPCW) [35] conventions provide for several types of inspections. Indeed, "*IAEA inspections have developed patterns that have been replicated for chemical and biological weapons, and which could be extended to other sectors*" [36]. At the regional level, the Treaty on Conventional Forces in Europe is complemented by a protocol on inspection [37].

Beyond disarmament *per se*, the inspection model was above all reused to negotiate one of the terms of one of the most important turning points in human history: space exploration. As soon as it was announced, at the end of the 1960s, that the United States wanted to bring together the major powers around a text designed to govern the conquest of space, President Johnson indicated that the project "*would have some analogies with the Antarctic Neutralization Treaty*" [38]. Indeed, the American plan for the right to visit "at any time" installations on celestial bodies was based directly on Article 7 of the Antarctic Treaty adopted eight years earlier. However, the US plans were blocked by the Soviets and the meetings sometimes ran out of steam. The main points of disagreement between the great powers were Soviet opposition to the accessibility and publicity of space discoveries and scientific information sought by the United States - implying the right of access - and the precise role of

the United Nations in the treaty, with the Americans wishing to submit disputes to the International Court of Justice against Soviet advice [39]. The Soviet blockage therefore forced the drafters to adopt another formulation of this Article 12 of the final treaty, based on the principle of prior notification of any planned visit [40]: "*[a]ll stations and installations, all equipment and all space vehicles on the Moon or other celestial bodies shall be accessible, under conditions of reciprocity, to the representatives of the other States to the Treaty. Such representatives shall give advance notice of any proposed visit so that appropriate consultations can take place and so that maximum precautions can be taken to ensure safety and avoid interference with normal operations at the site of the facility to be visited*" [41][15]. While one can only note the "somewhat hypocritical" nature [40] of the addition of security and practical considerations to justify the prior notification of the so-called need not to "interfere with normal operations", this compromise appeared at the time as a positive step towards peace. President Johnson thus welcomed the fact that "any facility built on a celestial body by any nation will be accessible to cosmonauts from any country" [42]. Finally, it should be noted that the Antarctic Treaty's inspiration for space, whose provisions could prove useful in the decades to come if a space race were to take place as China and the United States have announced, is not limited to the first celestial convention. Article 15 of the 1979 Agreement on the Activities of States on the Moon and Other Celestial Bodies is a clear mix of Article 7 of the Antarctic Treaty and Article 12 of the 1967 Treaty, retaining the superfluous justification of prior notification [43][16].

It can therefore be concluded at this stage that the model established by the US-led Antarctic inspection to maintain control over Soviet activity served as a remarkable precedent and basis for negotiation for most of the major peacekeeping agreements in the following decades. However, beyond the texts and speeches, it is useful to engage in a more advanced analysis of *the use of the* Antarctic inspection regime *in* practice.

3. The Backroom: Creating a Unique Product with Declining Appeal

Several factors qualify the particularly positive observations made earlier regarding the value of the Antarctic regime. An analysis of the implementation of Article 7 of the Antarctic Treaty first reveals certain limitations of the system (3.1). These reveal elements of an answer to the question of why such a regime, apparently so effective in maintaining peace, has not become a "standard clause" in any international agreement, and allows us to look ahead to the future of Antarctic inspection (3.2).

3.1. An Obsolete Product: Antarctic Inspection in Practice

With sixty years of experience, one might legitimately assume that the Antarctic inspection regime is now particularly efficient and successful. However, a reading of the inspection reports[17] often shows the opposite, and sometimes even tends to make one think of a regime that is being tested.

The report of the inspections conducted in 2019 - before the pandemic - by Argentina and Chile is thus edifying as to the fate reserved for the conclusions of previous inspections. The document states that "*[t]he lack of proper follow-up to the recommendations seems to undermine the effectiveness of the inspection system, with the consequent misuse of significant resources allocated to logistical deployment. Of the four inspected stations, only one had adequately addressed all of the observations made as a result of previous inspections*" [44][18]. In the same vein, it is surprising that the official responses of the governments concerned to the recommendations mention the mere "possibility" of implementing the previous recommendations, as in the Ukrainian response in 2019: "*[w]e agree with inspection's recommendation to design for the station a clear plan in order to follow-up the recommendation indicated by the previous inspections. To this end, as the first step, Ukraine will prepare a separate information paper regarding the follow-up of past recommendations made by each inspection team since 1998/1999 season*" [45]. It is also worrying that the documents relating to the stations, which are supposed to be available to the inspectors - such as the safety documents - are not always translated into one of the official languages of the Treaty, making it impossible to understand them and therefore to assess them during the visit [45][19].

As in other areas, Antarctic inspections do not always allow time for inspectors to carry out a full tour of the facilities, for reasons of economic efficiency. In addition to the regular presence of tourists, which often hinders inspections because of the priority given to them[20], it should be noted that the visits are clearly too quick. For example, China's 2016 inspection visited no fewer than six sites between 25 and 28 December, including three Chilean stations on 28 [46]. Similarly, the Norwegian inspection team in 2018 visited seven facilities, sometimes more than 750 km apart, between 9 and 17 February, which considerably limits the duration of inspections at each site [47][21]. This observation could be balanced by the fact that the inspection team knows the sites in advance and therefore prepares its visits; but this is not the case, since its report states that "*the decision to inspect SANAP summer station was taken while the inspection team was inspecting Neumayer III, at which time the team was informed of the existence of this station*" [47]. The Norwegian visit to the Belgian *Princess* Elisabeth *Antarctica* site on 11 February 2018, for example, lasted only 3 hours, bearing in mind that the ownership of the station, which has been known to be a complex issue since the Norwegian inspection in 2009, led the team to spend, not to say lose, "*some time and effort in trying to understand and get clarity with regard to the current situation*"[22]. Furthermore, the inspection of the *Perseus* station (owned by the Russian company ALCI Nord) during the same campaign was reduced to a simple flyover consisting of three circles over the station, due to the absence of landing permission. The inspectors therefore only flew over the area and then, on the occasion of a visit to another base - which

lasted only 2 hours - asked questions about the ongoing activities at *Perseus* [47][23]. Although overflight inspection is duly authorised by Article 7 of the Antarctic Treaty [1], the account of these difficulties, given the age of the regime, is surprising.

Reading recent reports, even though inspections have been in existence for sixty years, leaves the reader circumspect as to their organisation, and consequently as to the importance accorded by the Member States to this hard-won control. The importance given to inspections is of course a subjective criterion. However, the activities carried out at the stations in conjunction with the inspections, even though they are notified in advance - even though the Treaty does not make this prior information compulsory - are indicative of local priorities. In particular, tourism has clearly become a major issue in the development of activities in Antarctica, to the extent that priority now seems to be given to welcoming visitors, even during inspections. These geopolitical issues have a direct impact on the interest shown in inspections. The official inspection checklist, which is a non-binding guideline but in practice used by all inspection teams to assess the facilities visited, now includes a section 6 on the measurement of tourism activities and non-governmental organisations [49]. The result of these new economic interests, at a time when the Cold War is over, is a paradigm shift in the peaceful use of Antarctica, which is likely to relativise, if not extinguish, the old - and dated - global fears about the demilitarisation of the area. These developments, however positive they may be seen to be from the point of view of world stability, nevertheless give rise to fears of a form of degeneration of the Antarctic inspection. Excessively standardised to gain efficiency, its purpose appears philosophically obsolete from the outside, so that the future of this tried and tested regime is questionable - since no weapons or attempted weapons have ever been detected in Antarctica. Although the 1991 Madrid Protocol [30], insofar as it concerns environmental impacts, helps to give new meaning to inspection operations, states themselves now seem to no longer attach fundamental importance to them. Thus, it cannot be ruled out that economic considerations will gradually lead to their further acceleration, while welcoming their effectiveness, to limiting the number of inspections, and eventually to questioning the value of maintaining them.

Beyond this *internal* decline of international inspection in Antarctica, it is also necessary to further investigate the reasons for the more general disinterest in inspection regimes under international law.

3.2. A Poorly Sold Product: The External Decline of the Antarctic Inspection Model

The final element of this contribution is to question the impact of the Antarctic inspection model, not from the point of view of its historical influence on the development of regimes adopted in the same geopolitical context, but from a purely legal point of view. In other words, why has the Antarctic model, beyond the issues related to its effectiveness, only been adapted in the areas of disarmament, space exploration - the two themes being linked -, fisheries[24] and, more marginally, human rights[25] ? Why have major issues such as the fight against global warming, to take only this topical example, not led to the adoption, by analogy, of such a regime?

The first reason why the Antarctic model is not widely used is, very prosaically, its cost. Unless an international organisation has international funding to institutionalise inspections - as in the case of chemical weapons - these operations are funded by the states themselves. In the case of Antarctica, this means providing an expensive aircraft and/or satellites. In the case of OPCW inspections, it is stated internally that the grouping of inspections and the standardisation of procedures, allowing several inspections to be carried out on the soil of several states in a short period of time, makes it possible to limit the high costs of operations, which is an obviously essential objective[26]. In the case of maritime inspections, the *Vessel monitoring system*, "*a surveillance tool originally developed by the International Maritime Satellite Organization (Inmarsat) and the International Maritime Organization (IMO) to enhance safety at sea*" [50] in the 1980s, has been transposed to the fisheries domain and is now mandatory in several conventional systems. These systems, which allow ships to be easily located and thus greatly facilitate inspections, are not accessible to all States. An FAO report in 2003 was optimistic on the issue, stating that "it is *possible to set up a monitoring station and establish a VMS [vessel monitoring system by satellite] for as little as US$50,000, not including staff costs. Per ship, it costs US$5,000 for installation and less than US$1,000 for maintenance*" [51]. While these costs do not appear to be very high on a state level, the doctrine has noted that "*[d]eveloping countries are unwilling to expend large sums of money on establishing an elaborate vessel monitoring system or infrastructure to extensively monitor flagged vessels*" [52]. Some regional cooperation mechanisms have taken note of this by creating aid programmes for the countries concerned; for example, the "atypical" [53, 54] Fisheries Agency of the South Pacific Forum launched a programme in 1995 with a view to setting up such a system, which has been in place ever since. In the meantime, developing countries could "*benefit from the assistance provided by Australia and New Zealand*" [54]. This raises a difficulty that clearly prevents the systematisation of inspection regimes: the costs involved make them inaccessible to the least developed states, so that they are the preserve of the most economically advanced states. The multilateral solution of creating a dedicated international organisation does not seem to be a priority for international society in the management of issues likely to be subject to inspection - such as environmental issues.

The second factor that explains this dislike of inspection, which sheds light on states' lack of interest in the creation of an international organisation with environmental inspection powers, is the paradigm shift that occurred at the end of the Cold War. The main function of the inspection regimes for Antarctica, space and disarmament was - and still is in the last two cases - peacekeeping. Reading the preparatory debates and the media of the time, the impression that the inspection regime is seen as a real bulwark against the emergence of a

global conflict comes across strongly. This is no longer the sense of the major international debates, which often focus on non-state phenomena - one thinks of the fight against terrorism - or on issues that do not directly put the world at risk of armed conflict. In particular, it seems that climate change, environmental protection or the protection of personal data are not - yet? - areas likely to endanger international peace in a global manner, so that recourse to systems that are so costly and sometimes seen as infringing on state sovereignty[27] is not necessary. In other words, international inspection is a mechanism for guaranteeing the maintenance of peace, provided that the latter is *perceived as being effectively threatened* at the time of its adoption and then of its exercise.

4. Conclusion

Inspection regimes were therefore clearly not intended to be systematised. Rather, they seem to be intended as possible safety clauses in the event of the emergence of a global problem requiring effective coordination of the control exercised by international society over its own members. However, it is possible to wonder whether the climate emergency does not meet this very definition. And yet, in order to trigger the indispensable state *will*, states would no doubt have to feel militarily threatened by this phenomenon.

Yet, other issues are emerging today. The idea of a health vigilance, which would imply a revision of the International Health Regulations including an international inspection mechanism, was proposed by France in 2020. Indeed, the French Minister of Foreign Affairs indicated on April 29, 2020 that "we do not have today, with regard to these International Health Regulations, verification mechanisms. We therefore need to think about this. Such mechanisms could take several forms: peer review mechanisms, publicity of recommendations, inspections" [55]. This proposal has not yet been followed by concrete action. In another area, the European Union's draft directive on corporate sustainability due diligence, in its December 2022 version, provides for a right of inspection by member states, within companies located on the soil of another European state. History will perhaps show, if the inspection was effectively mobilized in these contexts, the permanence as well as the relevance of this system to face the great challenges of humanity.

References

[1] Antarctic Treaty, Washington, 1 December 1959, *UNTS*, vol. 402, 1961, No. I-5778.

[2] FISCHER Georges, VIGNES Daniel (1976), "Existe-t-il une fonction d'inspection dans la société internationale", *in* FISCHER Georges, VIGNES Daniel (ed.), *L'inspection internationale. Quinze études de la pratique des Etats et des organisations internationales*, Brussels, Bruylant, pp. 7-21.

[3] OETER Stefan (1997), "Inspection in international law. Monitoring compliance and the problem of implementation in international law", *Netherlands Yearbook of International Law*, vol. XXVIII, pp. 101-169.

[4] Statute of the International Court of Justice, annexed to the Charter of the United Nations, San Francisco, 26 June 1945.

[5] Rules of Court adopted on 14 April 1978 and entered into force on 1 July 1978.

[6] NYS Ernest (1894), *Les origines du droit international*, Brussels/Paris, Alfred Castaigne/Thorin & Fils, 424 p.

[7] PEARCE HIGGINS Alexander (1926), "Le droit de visite et de capture dans la guerre maritime", *RCADI*, vol. 11, pp. 69-170.

[8] DE MAS-LATRIE Louis (1892), "L'*officium robarie* ou l'office de la piraterie à Gênes au Moyen Âge", *Bibliothèque de l'École des chartes*, vol. 53, pp. 264-272.

[9] Treaty of Peace between Louis XIV, King of France, and Victor Amédée II, Duke of Savoy ('Treaty of Turin'), Turin, 19 August 1696.

[10] Treaty of peace and friendship between S. M. the King of Sardinia and the French Republic, Paris, 15 May 1796.

[11] Treaty concluded on 8 January 1892 with His Highness Said Omar Sultan of Anjouan.

[12] ROUARD DE CARD Edgard (1897), *Les traités de protectorat conclus par la France en Afrique. 1870-1895*, Paris, Pedone, 257 p.

[13] Convention for the regulation of fishing in the North Sea, The Hague, 6 May 1882.

[14] International Sanitary Convention, Paris, 17 January 1912, *RTSN*, vol. 4, 1921, No. 112.

[15] Treaty of Peace between the Allied and Associated Powers and Bulgaria, Neuilly, 27 November 1919.

[16] Peace Treaty between Poland, Russia and Ukraine, Riga, 18 March 1921, *RTSN*, vol. 6, 1921, No. 149.

[17] CHARPENTIER Jean (1983), "Le contrôle par les organisations internationales de l'exécution des obligations des Etats", *RCADI*, vol. 182, pp. 143-245.

[18] Peace Treaty ("Treaty of Versailles"), Versailles, 28 June 1919.

[19] Treaty of Peace between the Allied and Associated Powers and Turkey, Sevres, 10 August 1920.

[20] Treaty of Peace between Russia and Estonia, Tartu, 2 February 1920, *RTSN*, vol. 11, 1922, No. 289.

[21] Documents n° SecM93-988 (IBRD) and SecM93-313 (IDA), september 23, 1993.

[22] BECK Peter J. (1985), "Preparatory meetings for the Antarctic Treaty 1958-59", *Polar Record*, vol. 22, pp. 653-664.

[23] *Le Monde*, 'La conférence internationale sur l'Antarctique se réunirait le 15 octobre à Washington', 20 May 1959.

[24] *Le Monde*, "Les points de vue américain et soviétique paraissent assez rapprochés", 19 October 1959.

[25] *Le Monde*, "La première conférence internationale sur l'Antarctique s'ouvre à Washington", 16 October 1959.

[26] US DEPARTMENT OF STATE, *The Conference on Antarctica. Washington, October 15-December 1, 1959*, Washington, Department of State Publication, 1960, p. 48.

[27] Security Council, Debate on the draft resolution of the United States of America S/3995, Official Records, Thirteenth Year, 817th Meeting, 2 May 1958.

[28] Convention for the Protection of Antarctic Seals, London, 1st June 1972, *UNTS*, vol. 1080, 1978, No. I-16529.

[29] Convention on the Conservation of Antarctic Marine Living Resources, Canberra, 20 May 1980, *UNTS,* vol. 1329, 1983, No. I-22301.

[30] Protocol on Environmental Protection to the Antarctic Treaty, Madrid, 4 October 1991.

[31] *Le Monde*, "De l'Antarctique au désarmement", 3 December 1959.

[32] COURATIER Josyane (1991), *Le système Antarctique*, Bruylant, Brussels, 397 p.

[33] *Le Monde*, 'La première conférence internationale sur l'Antarctique s'ouvre à Washington', 16 October 1959.

[34] *Le Monde*, "Accord sur la démilitarisation de l'Antarctique", 22 October 1959.

[35] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Paris, 13 January 1993, *UNTS*, vol. 1974, 2001.

[36] LE GUELTE Georges (2003), "Les inspections de l'AIEA: la construction d'un système de sécurité collective", *Revue internationale et stratégique*, vol. 49-1, pp. 33-43.

[37] Treaty on Conventional Armed Forces in Europe, Paris, 19 November 1990, *UNTS*, vol. 2441, 2007, No. I-44001 and Protocol on Inspection.

[38] *Le Monde*, "Le Président Johnson invite l'URSS et les autres puissances spaciales à signer un accord sur la Lune", 10 May 1966.

[39] *Le Monde*, "Le comité spatial des Nations Unies ajourne ses travaux", 6 August 1966.

[40] DUTHEIL DE LA ROCHÈRE Jacqueline (1967), "La Convention sur l'internationalisation de l'espace", *AFDI*, vol. 13, pp. 607-647.

[41] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, Washington, Moscow and London, 27 January 1967, *UNTS*, vol. 610, 1970, No. I-8843.

[42] *Le Monde*, "Vers un accord sur l'utilisation pacifique de l'espace", 10 December 1966.

[43] Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, New York, 5 December 1979, *UNTS*, vol. 1363, 1992, No. I-23002.

[44] Report of the Joint Inspections Program undertaken by Argentina and Chile under Article VII of the Antarctic Treaty and Article 14 of the Environmental Protocol, 2018-2019, ATCM 42.

[45] Ministry of education and science of Ukraine, letter no. 161 dated 24 May 2019, attached to the Report of the Joint Inspections Program undertaken by Argentina and Chile under Article VII of the Antarctic Treaty and Article 14 of the Environmental Protocol, 2018-2019, ATCM 42.

[46] Report of the Antarctic Treaty Inspections undertaken by the People's Republic of China in accordance with Article VII of the Antarctic Treaty and Article 14 of the Environmental Protocol, April 2016, ATCM 39.

[47] Report of the Norwegian Antarctic Inspection under Article VII of the Antarctic Treaty and Article 14 of the Environmental Protocol, February 2018, ATCM 41.

[48] German-South African Report of Inspections under Article VII of the Antarctic Treaty and Article 14 of the Protocol on Environmental Protection, January 2013, ATCM 36.

[49] Checklist A. Antarctic Stations and Subsidiary Installations, Annex to the Resolution 3 (2010), RCTA XXXIII- CPE XIII Punta del Este.

[50] GAMBARDELLA Sophie (2017), "Le processus de Kobé: un vecteur de circulation des normes et des acteurs dans un contexte de gouvernance internationale fragmentée", *in* MALJEAN-DUBOIS Sandrine (ed.), *Circulations de normes et réseaux d'acteurs dans la gouvernance internationale de l'environnement*, Aix-en-Provence, Confluence des droits, pp. 147-164.

[51] FAO (2003), *Technical Guidelines for Responsible Fisheries*, No. 1, Supplement No. 1, "Fishing Operations. 1. Satellite Vessel Monitoring Systems", Rome.

[52] CANTRELL Ryan (2006), "Finding Nemo... and Eating Him: The Failure of the United Nations to Force Internalization of the Negative Social Costs That Result from Overfishing", *Wash. U. Global Stud. L. Rev*, vol. 5-2, pp. 381-402.

[53] BONUCCI Nicolas (1994), "Une organisation régionale des pêches atypique: l'Agence des pêches du Forum du Pacifique Sud", *Revue de l'INDEMER*, n°2, pp. 91-119.

[54] LUCCHINI Laurent (2000), "L'État insulaire", *RCADI*, vol. 285, pp. 251-392.

[55] French Ministry of Europe and Foreign Affairs, Official Foreign Policy Statements of April 30, 2020, Speech by Mr. Jean-Yves Le Drian, Minister of Europe and Foreign Affairs at the Paris Peace Forum (Paris, 04/29/2020).

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1 See also SALMON Jean (ed.), *Dictionnaire de droit international public*, Brussels, Bruylant, 2001, p. 582, entry "inspection" (that "[m]odality of control tending to make it possible to establish that the addressees of a norm of international law respect it").

2 We think in particular of the case of the International Criminal Court, where the investigation literally triggers the proceedings (Rome Statute of the International Criminal Court, Rome, 17 July 1998, Articles 53 et seq.).

3 The comments in this first part are a continuation of more substantial research work carried out in 2018 within the framework of the Study and Research Centre of The Hague Academy of International Law. For further details, please refer to MAUREL Raphaël, "Les régimes d'inspection à travers le temps: regards sur l'évolution d'un mécanisme de garantie en droit international", *in* CHAUMETTE Anne-Laure, TAMS Christian J. (eds.), *Les inspections internationales / International Inspections*, The Hague, Brill Nijhoff, Centre for Studies and Research in International Law and International Relations Series, 2022, p. 127-181.

4 See for example p. 230: "[i]f international law admits that belligerent cruisers should capture their enemy's ships and prevent contraband from being carried to the latter, it must admit, as a condition for the exercise of this right, the visit of all vessels other than those belonging to the military navies of the various States. Thus, the right of visit and search is very old [...]".

5 Scelle, for his part, believes that traces of this right of visit can only be found in the 17ème century (SCELLE Georges, "Zouch", *in* PILLET Antoine (ed.), *Les fondateurs du droit international*, Paris, V. Giard & E. Brière, 1904, p. 307).

6 The author provides, pp. 267-268, evidence of the existence of such a practice in the fight against piracy during the 13ème century and more certainly in the 14ème century.

7 The provision of articles 28 was later qualified as an inspection; see VOELCKEL Michel, "La Convention du 1er juin 1967 sur l'exercice de la pêche en Atlantique Nord", *AFDI*, vol. 13, 1967, pp. 647-672, spec. p. 663.

8 France, Soviet Union, Great Britain, United States, Belgium, Argentina, Australia, Chile, Japan, New Zealand, Norway and the Union of South Africa.

9 Through resolutions IBRD-93-10, SecM93-988 and IAD 93-6, SecM93-313, the World Bank's organs created a contentious body qualified as a "quasi-judicial" inspection system. In our view, however, this new manifestation of inspection, which has since been adopted by most investment and development banks and in economic matters in general, does not fully correspond to the "classic" inspection presented here. The importance of these contentious mechanisms in the international order, as well as the exercise, within their framework, of *in situ* observation missions, however, precludes the conclusion that this is a mere abuse of language. In this sense, the 1993 resolutions introduced a real semantic break, giving rise to a new form of inspection that is now well established in the international economic law landscape.

10 On 23 January 2020, after an initial contact in August 2018 and, consequently, more than a year of regularly reiterated research by email, the Senior Advisor for Antarctica of the Office of Ocean and Polar Affairs of the US Department of State, who is supposed, according to the Antarctic Treaty Secretariat, to have these preparatory works, replied to us in good faith that he was finally "unable to determine what files [they] have related to [my] request".

11 See article 6: "1. At any time after the commencement of commercial hunting operations, a Contracting Party may propose, through the Depositary Government, the convening of a meeting of the Contracting Parties for the purpose of: (a) establishing, by a two-thirds majority of the Contracting Parties, including the votes of all States signatory to this Convention attending the meeting, an effective system for monitoring, including through inspections, the implementation of the provisions of this Convention [...]".

12 Personal translation: "[a]ccording to American specialists, if such an agreement were concluded it could eventually serve as a model for a global disarmament treaty, with the southern continent becoming a "pilot region". Indeed, in the case of an agreement on the demilitarisation of Antarctica, the United States is determined to require the development of an effective inspection system. The issue of monitoring and inspection capabilities has always been a stumbling block in all East-West talks on general disarmament".

13 For example, see Security Council resolution 687 (1991) of 3 April 1991, section C, §9, (b), (i), on Iraq.

14 For example, Article III-1 of the Treaty on the Non-Proliferation of Nuclear Weapons provides for an obligation for all non-nuclear-weapon States to conclude a safeguards agreement with the Agency for the purpose of establishing non-proliferation inspections (Treaty on the Non-Proliferation of Nuclear Weapons, London, Moscow, Washington, 1 July 1968, Article III-1). For an example of implementation, see Agreement between Jamaica and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Treaty on the Non-Proliferation of Nuclear Weapons, Kingston, Vienna, 6 November 1978, *UNTS*, vol. 1161, 1980, No. I-18348, Article 9.

15 Compare article 12 with the wording of Article 7 of the Antarctic Treaty.

16 Article 15: "[e]ach State Party may ensure that the activities of other States Parties relating to the exploration and use of the Moon are consistent with the provisions of this Agreement. To this end, all space vehicles, equipment, stations, facilities and equipment on the Moon shall be accessible to other States Parties. The latter shall give prior notice of any proposed visit, so that appropriate consultations may be held and maximum precautions taken to ensure safety and to avoid interference with normal operations at the site of the facility to be visited. See on this formulation DUTHEIL DE LA ROCHÈRE, "La Convention sur l'internationalisation de l'espace" [40], p. 644. However, no space power has ratified this treaty, making it *de facto* of little use.

17 All Antarctic inspection reports are recorded in a publicly accessible database at https://www.ats.aq/devAS/Ats/InspectionsDatabase?lang=f.

18 See p. 10. In the same vein, but more nuanced, see e.g. Report of the Antarctic Treaty Inspections undertaken jointly by the United Kingdom and the Czech Republic in accordance with Article VII of the Antarctic Treaty and Article 14 of the Environmental Protocol, May 2015, ATCM 38, p. 10. 10 More implicitly, see also German-South African Report of Inspections under Article VII of the Antarctic Treaty and Article 14 of the Protocol on Environmental Protection, January 2013, ATCM 36, p. 14: "[a]s this inspection team builds on previous inspection results, it recommends to future inspection teams to make use of prior inspection reports as reference points when checking on treaty compliance. It also invites Member States operating stations in the Antarctic to embrace inspection results as a chance to learn from other stations and to improve their facilities and operating methods.

19 See p. 10: "[p]arties are encouraged to have relevant documentation, for example, documents related to station operation or contingency plans, in at least one of the Treaty languages, so as to facilitate the observers' task, as well as to assist potential foreign visitors that may arrive at the station".

20 This point is particularly noted at the time of the Ukrainian and British facility inspections in 2018-2019. The importance given to tourists and the lack of interest in inspection missions is even the subject of a general remark by the team: "[s]ites and stations that receive visitors should make sure their appropriate personnel are fully available for the inspection team, giving priority to the inspection over attention afforded to tourists whose visits, ideally, should be suspended during inspections. Particularly considering that reasonable notification in advance is provided as to the arrival of the inspection team" (p. 10).

21 See specifically p. 4-5 including a map of the area. Examples could be multiplied; for example, in 2015, the British and Czech team visited, "between 31 December 2014 and 12 January 2015 and inspections were made of six permanent research stations; six summer-only research stations; one non-governmental facility; one refuge; six cruise ships and five yachts" (Report of the Antarctic Treaty Inspections undertaken jointly by the United Kingdom and the Czech Republic in accordance with Article VII of the Antarctic Treaty and Article 14 of the Environmental Protocol, May 2015, ATCM 38, p. 6).

22 By comparison, the previous visit to this station lasted from 9 a.m. to 4 p.m., with the inspection team even arriving the evening before [48].

23 See the edifying account on p. 29: "At the point of departure for Perseus, the inspection team's pilot contacted the flight operator at Novo airbase radio in order to get a clearance for landing at Perseus. The flight operator stated that the inspection team's aircraft - a non-scheduled flight - should not land on Perseus due to an incoming Ilyushin. In consultation with the ALCI director, the team decided to wait until the Ilyushin had landed and to then look at the possibility to land if the pilots considered that there was enough space, given that there was an Ilyushin on the runway. The inspection team's plane flew over Perseus at 18:30. The Ilyushin was parked in the middle of the runway, and the pilot decided not to land. The inspection was carried out as an overflight inspection (ref. Antarctic Treaty art. VII, which allows for aerial observations to be carried out at any time over any or all areas of Antarctica). The plane circled three times over the runway and then proceeded to Novo airbase. The team had a chance to ask questions related to the operations at Perseus while conducting inspection at Novo. The following information and analyses are thus based on overflight sightings and interviews with ALCI personnel at Novo, as well as on the document Perseus Blue Ice Runway Initial Evaluation report, which was provided to the inspection team by the ALCI director after the inspection".

24 In this area, since the early 1960s, a system of observing compliance with quotas has been set up, with not "inspectors" but "officers" whose missions are similar. See, for example, Convention on Fishing in the North Atlantic, London, 1st June 1967, Article 9.

25 One thinks here of the European Convention for the Prevention of Torture, which provides for inspections in places of deprivation of liberty (see European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg, 26 November 1987, ETS No. 126, Article 2: "[e]ach Party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority").

26 This information was gathered during a meeting with the OPCW's Legal Affairs Director, organised in the framework of the Centre for Studies and Research of The Hague Academy of International Law in August 2018.

27 This is the opinion of a part of the doctrine, as well as of certain States at the time of the debates prior to the establishment of these regimes. See, for example, LE GUELTE, "Les inspections de l'AIEA: la construction d'un système de sécurité collective" [36], p. 34: "[i]nternational inspections are an attack on sacrosanct national sovereignty".