

Special Political and Decolonization Committee

Study Guide

The Issue of Breaches of the Antarctic Treaty System

There are few places in the world where there has never been war, where the environment is fully protected, and where scientific research has priority. The whole continent of Antarctica is one of them. It is often called “A natural reserve, devoted to peace and science” which proves how untouched and innocent it actually is.

The Antarctic Treaty

Signed in 1959 by twelve countries ranging from the US, USSR and France to Norway and South Africa, the Antarctic Treaty ensures peaceful purposes, freedom of scientific investigation and preaches international cooperation. It states and mandates that governments do not use the continent for militaristic operations including nuclear programs, missile testing and undercover operations. The continent is to remain completely sovereign, and no country is to lay claim to the territory. In 1991, a protocol on Environmental Protection has been added to the Treaty, which together with two other Conventions protects the ecosystem, and precedes any possible ecological catastrophes. Throughout the years, other Protocols and Articles have been added to the Antarctic Treaty, making it a system of treaties. This system has been ratified by a majority of the member states, ensuring a unanimous agreement to protect and preserve the continent.

Challenges to the Antarctic Treaty System

Times have changed and new circumstances have arisen. Increase in human activity in the Antarctic region, due to global warming and tourism, and the conclusion of new international conventions and treaties are two of the most important issues putting the Antarctic Treaty System under pressure and giving rise to new challenges in the Antarctic region. As mentioned, the protection of the Antarctic environment, the regulation of tourism in Antarctica, and the question of jurisdiction in the Antarctic region are the most pressuring issues.

Human activity in the Antarctic region

It is a well-known and well-documented fact that the Antarctic icecaps are melting due to global warming. Combined with technological advances, this creates greater opportunities for human activity in the Antarctic region. Besides an increase in absolute numbers of human activity in the Antarctic, there are also several new activities being exercised in the Antarctic region. While no one could have foreseen

that tourism would become an important activity in Antarctica at the time of the drawing up of the Antarctic Treaty, the number of tourists has steadily grown over the course of the past decades. More than 56,000 tourists visited Antarctica during the 2018-2019 season. The figure for the current season is expected to rise to more than 78,500. Another activity that has the potential of becoming very important in the Antarctic region is so-called biological prospecting, often abbreviated to bioprospecting. Although there is a lot of discussion on the definition of this term, bioprospecting can be defined as the commercialization of knowledge gained from research with regard to bio-organisms. Lastly, IUU (i.e. illegal, unreported and unregulated) fishing, though not new to the Antarctic region, has alarmingly increased during the last decennium. Because it remains difficult to patrol Antarctic waters and because of technical difficulties from the demilitarization of the Antarctic region, IUU fishing poses a real threat to the Antarctic ecosystem, and therefore to the Antarctic Treaty System. To deal with the important threat posed by the growing tourism in the Antarctic, some reforms are needed.

Changes in international law

Since the conclusion of the Antarctic Treaty in 1959, international law underwent profound changes. There has been a proliferation of international and multinational treaties and many new international organizations have seen the light. This has raised the question of the relation of the Antarctic Treaty System and its components to these new international treaties and international organizations. An important treaty in this respect is the United Nations Convention on the Law of the Sea (also known as UNCLOS), signed in 1982. This convention consists largely of codified customary law, but also incorporates some major changes. A main example of such a change is the regime for the deep seabed. An International Seabed Authority (ISA) has been founded which is responsible for granting permits for the exploitation of mineral resources from the deep seabed. The question has therefore arisen whether the ISA could grant permits for mineral exploitation of the deep seabed in the Antarctic region, despite the Madrid Protocol, which prohibits mineral exploitation in the Antarctic. To answer this question, some other questions need to be answered first, such as the territorial scope of the Antarctic Treaty and its different components. Another change in international law relevant to the Antarctic Treaty System is the growth of the number of environmental treaties in force, such as the Biodiversity Treaty. This raises the question of the application of these treaties to the Antarctic Treaty Area and of cooperation between the organizations founded by these treaties and the Antarctic Treaty Members.

Protection of the environment

As has been mentioned above, the Antarctic Treaty System has one of the most stringent environmental protection systems of the international law. Since the entry into force of the Environmental Protocol in 1991, no activity in the Antarctic can be organized without a prior environmental impact assessment. Also, mineral exploitation has been completely prohibited in the Antarctic Treaty area since the entry into force of this protocol. However, even the already strict system will not lead to sufficient protection of the environment to ensure similar possibilities for the future generations. The greatest danger to the Antarctic environment comes from cumulative impacts. Though every little activity in itself does not harm the Antarctic environment greatly, the combination of all these little activities on the other hand poses a great threat. The obligatory environmental assessment impacts do little to counter this problem. Therefore, in a scenario of business-as-usual (meaning that Antarctica will get more crowded and hotter), the current legislation does not suffice. The Environmental Protocol does not go beyond damage control. There are also problems with the implementation of the Environmental Protocol. Not all countries have implemented the Protocol in a sufficiently strict manner. This leaves possibilities for individuals or companies wanting to develop activities in the Antarctic to go forum-shopping, to look for 'jurisdictions of convenience', where the rules with regard to the environmental impact are less strict. This problem could be solved with the implementation of a third-party state, but the discussions preceding the creation of such party would be copious and lengthy. To resolve this situation, firstly, the Antarctic Treaty Members must pressure every member state to the Antarctic Treaty System to implement the rules of the ATS in a strict manner. New, more stringent environmental protection regulations will be of no avail if they are not properly implemented. Besides proper implementation of the existing regulation, more stringent new regulation will also be needed.

Conclusion

In conclusion, most of all, the Antarctic Treaty Members need to cope with the problem of cumulative impacts. As mentioned above, it is the combination of all the little activities that is putting the Antarctic environment and ecosystem under great pressure. Coping with these cumulative impacts could prove most problematic, since in liberal societies it is difficult to forbid activities. It is important that member states acknowledge these issues and come up with effective ways to counter and resolve them without endangering the region further.

Sources

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