



What has happened at Milan ATCM?

Some thoughts on PoLSaNex on Antarctic conservation

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ATS Resilience
under
Anthropocene

1. Science informing Policy through the Law : PoLSaNex

ATCM as conservation policy & law-making body

CEP as environmental advisory body for ATCM under the authority of ATCM

SCAR as independent scientific advisory body for CEP/ATCM

International law (in its broader sense, including soft laws) sets the frame for the “nexus”.

Some of the recent controversies in Antarctic conservation may be seen as the law being used to reject/slowdown/question proposed conservation policies: cf

- Emperor Penguin ASPS designation:
- ASPA with “inviolable areas”:



Photo: June 26 at WG 2 SCAR President introducing WP on geoengineering in the Antarctic.

1. Science informing Policy through the Law : Law evolves

IMPORTANT: CEP members and CPs are basing their arguments on the law agreed by them. Antarctic conservation based on the rule of law is still intact.

➡ Use of “different” interpretation/application of the law is the core of controversies.

IMPORTANT: International law does evolve through subsequent practice. Cf. ICJ *Whaling in the Antarctic* judgment (2014)

➡ Non-binding Resolutions and even Final Report languages adopted by consensus would constitute such practice.

Cf.

- Freedom of scientific research: Protocol Art.3 (3) & AT Art.II



Photo: June 24 at CEP China introducing draft CEE on its 6th Station at Marie Byrd Land.

2. My personal summary of Milan ATCM: On transparency

Transparency has become the key for Antarctic governance, including environmental governance.

- Three aspects of transparency in Antarctic governance
- Increasing transparency of Antarctic activities through EIES and broadened EIA process will strengthen the PoLSciNex also in conservation policy-making.
- July 31 Tokyo Seminar: “Strengthening the Transparency of the ATS” (hybrid)



Photo: July 3 at final Plenary : adoption of the Final Report



2. My personal summary of Milan ATCM: notable issues

Other notable issues to look for:

- Proposed resolution on towards ending plastic pollution in the AT area (WP1)
Good reminder of the connection with global governance process
- Proposed resolution on revised guidelines on implementation of ASPAs (WP14 B)
As ASPA designation becoming more difficult, good to have consensus on the practicalities
- Draft CEE on Chinese 6th station in Marie Byrd Land (WP18 &19)
Constructive and engaging process within the current requirements
- Antarctic geoengineering (WP51)
Good initial discussion, with SCAR, CEP and ATCM exercising their respective roles (later).
- German new ASPA in Dronning Maud Land designation (WP14 A)
The reference areas as “inviolable areas” under Art.3 (2)(a)? (later)

3. PoLSaNex conundrum (1): Science's purpose

Science in the Antarctic, Yes, but for what purpose?

- Purpose test in International law; legal controversies
- To avoid and contain such controversies:
 - Objective analysis of facts extremely important
 - Transparency of such facts in the governance system: EIES/EIA
 - Emerging consensus necessary to treat science for a particular purpose: bioprospecting; tourism; geoengineering; etc.

Antarctic geoengineering and the role of SCAR/CEP/ATCM

- The issues is whether and how to treat scientific experiments in Antarctica **for purpose of geoengineering** differently from others.
- SCAR's scientific advice clear (WP 51); CEP's environmental advice, based on environmental principles and procedures; ATCM's policy direction by consensus?

3. PoLSaNex conundrum (2): "invioate areas" in ASPA

Disagreement: Management methods or treaty interpretation?

- International Environmental Law: guidance for national implementation
- ASPA Management Plans require CPs consensus on the methods of implementation: accommodation of national environmental policies

ASPA proposals with "prohibited zones" or "reference areas"

- Scientific layer: inclusivity enhanced through SCAR?
- Environmental policy layer: improvement on SGMP / ICGs process?
- Treaty interpretation layer: disputes relating to Annex V Art. 3 (2) (a)'s authority, being objected to by: (a) in relation to freedom of scientific research (AT Art.II); (b) priority accorded to its value as an area for the conduct of scientific research (Protocol Art.3 (3)).

Grazie, Milano!

