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<<http://www.research.kobe-u.ac.jp/gsics-pcrc/ATS-resilience/PLS12-ATS-resilience.html>>

The importance of effective compliance and enforcement to long-term resilience of the ATS

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Abstract

Effective compliance and enforcement of treaty obligations are essential to the credibility of the Antarctic Treaty System (ATS), a crucial ingredient of long-term resilience. The ATS experiences more enforcement challenges than most treaties due to the continent's physical characteristics. Moreover, at the heart of the unique relationship between international law and national legal systems in the Antarctic area lie two fundamental issues: territorial sovereignty disputes and ambiguities in the ATS treaties on jurisdictional nexus between treaty obligations and persons who undertake activities in Antarctica. Parties have chosen inconsistent jurisdictional bases in their national laws to implement treaty provisions, resulting in enforcement gaps. Sensitivities over sovereignty issues inhibit Parties from addressing these gaps, even when they result in violations going unprosecuted.

The Antarctic Treaty contains provisions concerning certain aspects of jurisdiction, in Articles VII and VIII. The Environmental Protocol requires Parties to take appropriate measures to ensure compliance, but, where non-governmental activities are concerned, it is unspecific as to whose compliance each Party has to ensure. Parties have chosen a variety of jurisdictional bases in their national laws, giving rise to the potential for overlaps and gaps in Protocol enforcement. When the Liability Annex was negotiated, a uniform set of jurisdictional rules had to be agreed to avoid operators being liable in more than one jurisdiction. This took fifteen years; and the (very cumbersome) solution arrived at will only apply to cases arising under the Annex.

Even if the Parties prefer to avoid addressing jurisdictional issues, they could consider practical ways of co-operation to try to improve law enforcement in the Antarctic Treaty area, for example, new arrangements on mutual legal assistance in criminal and/or civil matters within the framework of the Antarctic Treaty. These could cover matters such as taking evidence or statements, effecting service of judicial documents, examining objects and sites and transfer of detained persons. Since Article IV of the Treaty would always apply it ought to facilitate such co-operation without prejudice to differing views on sovereignty claims.

As tourism, fishing and other non-governmental activities in Antarctica increase, the need for new modes of practical co-operation on domestic law enforcement is intensifying. The effectiveness of ATS inspection regimes demonstrates that Parties can co-operate at the international level despite the challenges. To secure future ATS resilience, co-operation needs to extend into areas where domestic law penetrates. The Parties also need to develop new ways to engage with third States and non-State actors to secure respect for ATS values.

This presentation will focus on jurisdiction and enforcement issues in the Antarctic Treaty and Environmental Protocol, which I hope will complement the presentation on similar issues in relation to CCAMLR by Honniball and Schatz.

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