Valentin Bou-Franch*

The Antarctic Treaty System

SLIDE 1

Hello, welcome. My name is Valentin Bou, and in this publication I am going to talk to you about the Antarctic Treaty System.

SLIDE 2

The Antarctic Treaty was adopted in Washington on 1 December 1959. Its scope of application is delimited by the region south of 60° South latitude, including the ice shelves, but excluding the high seas.

This scope of application was extended with the development of the Antarctic Treaty system. Thus, on the one hand, the Convention on the Conservation of Seals in Antarctica also applies to the high seas south of 60° South latitude. On the other hand, the Convention on the Conservation of Antarctic Marine Living Resources extends north of 60° South latitude to the Antarctic convergence. The Antarctic convergence is a natural boundary of the Southern Ocean that separates fresh and cold

This work is licensed under a Creative Commons Attribution - Noncommercial - No Derivative Works License

With the support of the Erasmus+ Programme of the European Union

* Full Professor of Public International Law. University of Valencia (Spain).

waters to the south, with salty and warmer waters to the north. This second convention applies to all areas of the high seas.

The States Parties to the Antarctic Treaty are the Consultative Parties and the Non-Consultative Parties. The Consultative Parties are, in turn, of two kinds: 1) the original Consultative Parties, which are the twelve States present in Antarctica when the Antarctic Treaty was adopted in 1959; and 2) the supervening Consultative Parties, which are the States that accede to the Antarctic Treaty and as long as they fulfil the condition of establishing a scientific station or sending a scientific expedition to Antarctica. In contrast, the non-Consultative Parties are the States that accede to the Antarctic Treaty and do not fulfil the above condition.

SLIDE 3

The Consultative Parties enjoy a privileged status, as they: (1) participate in the Meetings of the Consultative Parties and adopt recommendations; (2) can appoint Antarctic inspectors; and (3) have the right of veto both to amend and modify the Antarctic Treaty, and to prevent the accession of new States.

The basic principles of the Antarctic Treaty include: 1) the exclusive use of Antarctica for peaceful purposes; 2) the freedom of scientific research and the obligation of international

scientific cooperation; 3) the non-solution or “freezing” of the problem of Antarctic sovereignty; 4) the principle of non-nuclearization; and 5) the nationalisation of compliance monitoring procedures, as the Consultative Parties can appoint observers who will have freedom of movement throughout Antarctica.

On the other hand, the Antarctic Treaty system is made up of the Recommendations of the Consultative Parties and various international treaties linked to and complementary to the Antarctic Treaty.

Thus, firstly, among the recommendations, the 1963 Recommendation on the Conservation of Antarctic Fauna and Flora stands out. This Recommendation establishes protection measures applicable on the mainland and on the ice shelves south of 60º South latitude.

Secondly, the Convention on the Conservation of Antarctic Seals was adopted in 1972. This Convention establishes protection measures for six species of Antarctic seals, applicable also in the high seas south of 60° South latitude.

SLIDE 4

Thirdly, the Convention on the Conservation of Antarctic Marine Living Resources was adopted in 1980. This Convention is characterised: 1) by

applying to existing marine living resources up to the Antarctic convergence; 2) by implementing the “ecosystem” approach. For example, to protect endangered species such as whales, it establishes a zero catch quota for krill, a surplus species, which is considered “food for whales”; and (3) it creates the Commission for the Conservation of Antarctic Marine Living Resources, with powers to adopt binding measures.

Fourthly, the Convention on the Regulation of Antarctic Mineral Resource Activities was adopted in 1988. Three comments can be made about this Convention: (1) it applies to the Antarctic continent, islands, and continental shelf south of 60° South latitude; (2) the Convention is very strictly regulated, with imposition of strict and unlimited liability for any damage that may occur; and (3) it is a Convention “whose entry into force was aborted before it was born.” The campaign against it by environmentalists (above all, by Cousteau and Greenpeace) led to France and Australia declaring two months after its adoption that they would not ratify it, which meant in practice a veto of its entry into force, adding that “Antarctica is a natural reserve, a land of science, in which all activity relating to mineral resources will be prohibited.”

Finally, in 1991, the Protocol to the Antarctic Treaty on Environmental Protection was adopted, the objective of which is the overall protection of the

Antarctic environment and its dependent and associated ecosystems. This Protocol designates Antarctica as a “natural reserve, devoted to peace and science.”

The Protocol also contains a decalogue of environmental principles. It should be noted that this Protocol establishes both an absolute prohibition of mining activities and an obligation to conduct environmental impact assessments for all Antarctic activities.”

SLIDE 5

That is all I had to say. Thank you very much for your attention.