

**COMPARATIVE ASSESSMENT OF THE ANTARCTICA TREATY SYSTEM:
NON-MILITARIZATION AND ENVIRONMENTAL PROTECTION**

SPACE LAW SYMPOSIUM - 2019

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Introduction

- **Comparative assessment** of the **Antarctica Treaty System** may be instrumental for the study of specific features of the **Moon Agreement**, in particular *non-militarization* and *environmental protection*;
- **The Antarctic Treaty was signed in Washington on December 1st 1959**, establishing a basis for international peaceful cooperation in a vast, pristine and strategic continent, beyond the limits of full national jurisdiction;
- The Antarctic Treaty is the cornerstone of an entire **international legal system**, composed by other international instruments, including the *1991 Protocol on Environmental Protection*;

Peaceful Purposes

- The Antarctic Treaty recognizes that *"it is the interests of all mankind that Antarctica shall continue forever to be used **exclusively for peaceful purposes** and shall not become the scene of international discord"* (Preamble);
- Peace has indeed been preserved in the continent, in large part by **acknowledging, but "freezing", claims to sovereignty** while the Antarctic Treaty is in force (Art. IV);
 - In fact, the Antarctic Treaty does not have a specific expiration date, and has never itself been modified;
- The Moon Agreement follows a similar path: *"The moon shall be used by all States Parties **exclusively for peaceful purposes**"* (Art. 3);

Non-Militarization

- **Measures of military nature are prohibited in Antarctica**, such as the establishment of military bases and fortification (Article I, 1);
 - Nevertheless, the use of military personal and equipment for scientific research or other peaceful purposes is allowed (Art. I, 2);
 - Nuclear explosions and the disposal of radioactive waste material is also prohibited (Art. V, 1);
- **Similar provisions are identified in the Moon Agreement**, Art. 3:
 - Including prohibition of any threat or use of force or any other hostile act on the Moon, and the placement of nuclear weapons or other weapons of mass destruction;

Environmental Protection

- **The Antarctic Treaty had a clear geopolitical scope;** nevertheless, soon the Consultative Parties leaned towards an **environmental approach**, as far as the global governance of the region is concerned;
- In 1988, the *Convention on the Regulation of Antarctic Mineral Resource Activities* was concluded, but never came into force;
 - Approved after tense debates, regulated the mineral exploration and exploitation in Antarctica, which had the clear potential of producing environmental harm in a fragile ecosystem;
 - **Negative reaction** against such Convention was soon identified, based on environmental concerns;

The 1991 Protocol

- *The 1991 Protocol on the Environmental Protection* designated Antarctica as **a natural reserve, devoted to peace and science** (Art. 2);
- Established environmental principles and required prior assessment of environmental impacts (Art. 3);
- Created the Committee for Environmental Protection (CEP);
- **All activities related to Antarctic mineral resources are prohibited by the Protocol on the Environmental Protection, except for scientific research;**
 - Such prohibition cannot be amended for at least 50 years following the entry into force of the Protocol, *i.e.*, 2048;
 - Application of the **precautionary approach**;

Moon Environmental Balance

- The Moon Agreement includes provisions to protect the Moon environment, although in accordance with a *comparatively less detailed regime*;
- States Parties to the Moon Agreement shall take measures to prevent the **disruption of the local environmental balance**, informing the UN Secretary-General (Art. 7);
- The Moon and its natural resources are considered as the "common heritage of mankind" (Art. 11, 1);
 - *"Neither the surface nor the subsurface, nor any part thereof or natural resources in place, shall become property of any State, international intergovernmental or non-governmental organization, national organization or non-governmental entity or of any natural person"* (Art. 11, 3);

Concluding Remarks

- As provided by Article 11, 5, of the Moon Agreement, **States Parties undertake to establish an international regime** including appropriate procedures, to govern the exploitation of the natural resources of the Moon, "*when such exploitation is about to become feasible*";
- As **space resource activities** become increasingly more viable, and the attention of the international community revolves, once again, around the Moon and other celestial bodies, this may very well be the time, by acknowledging the lessons of the Antarctic Treaty System, to develop a specific environmental instrument regarding the Moon and celestial bodies, for the furtherance of *peaceful international cooperation and coordination*.



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Thank you