Intergenerational Equity and the Antarctic Treaty System: Continued Efforts to Prevent “Mastery”

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1. Introduction

Intergeneration equity is a principle on the relationships between past, present and future generations: “To define intergenerational equity, it is useful to view the human community as a partnership among all generations”.1 Particularly during the last two decades the content and legal status of this concept have been the subjects of comprehensive discussions among philosophers, economists and lawyers. Questions include whether future generations can have ‘rights’ and if so, whether these rights are individual rights or group rights. Other questions relate to the content of the rights and obligations: Is it about ensuring future generations a similar level of wealth and welfare, is it about leaving options for future generations to enable them to make their own choices, or is it about passing on cultural and natural assets?2 Furthermore, questions also arise regarding the interrelationship between intra- and intergenerational equity. For instance, how to balance options for future

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generations and options for poor people among the present generation?\(^3\) Recently, Malgosia Fitzmaurice\(^4\) provided a valuable overview of these discussions (summarizing the views of other authors, e.g., E. Brown Weiss, L. B. Solum and C. Redgwell),\(^5\) and further contributes to the debate by discussing initiatives in domestic law and in jurisprudence to work out the concept of intergenerational equity in more detail.

It is clear that the questions are complex and that no consensus exists among scholars in regards to the correct answers. In diplomatic debates and negotiations between governments of states, often these academic questions do not even receive serious attention. Various treaties and international policy documents recognize the responsibility of the present generation for future generations without further detailing the legal status and more concrete consequences of this responsibility.\(^6\) This also applies to the Antarctic. In several important instrument of the Antarctic Treaty system (ATS)\(^7\) it is stated that the Antarctic is managed “in the interest of all mankind”.\(^8\) Most likely this

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\(^3\) See: Kerry Turner, Speculations on Weak and Strong Sustainability, Cserge Working Paper GEC 92–26. See also: Edith Brown Weiss, “Intergenerational equity: a legal framework for global environmental change”, in Edith Brown Weiss (ed.), Environmental change and international law: New challenges and dimensions, United Nations University Press, Tokyo, 1992, at 8: “[…] there are instances where the actions needed to protect the health of the planet for future generations may conflict with the need to alleviate poverty as quickly as possible. In these instances, we need to develop appropriate mechanisms and allocate sufficient resources to maximize the ability to advance both goals”.

\(^4\) Malgosia Fitzmaurice, Contemporary Issues in International Environmental Law, Edward Elgar, Cheltenham UK/Northampton/USA (2009), Chapter 3.

\(^5\) Ibid., note 1 at 110.

\(^6\) Ibid.


\(^8\) See: for instance, the preamble of the Antarctic Treaty: “Recognising that it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord”. See also: