

# UNITED ARAB EMIRATES “ICEBERG PROJECT” – WOULD AN AMBITIOUS CONCEPT COMPLY WITH INTERNATIONAL LAW?

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## 1. PRESSURE OF CLIMATE CHANGE

Every single state in the world that plans to continue its existence in current and following century should not underestimate the threat posed by the global warming. Rising average temperatures caused by CO<sub>2</sub> and other greenhouse gases' emissions<sup>1</sup> in the last decades have alarmed climatologists all over the world.<sup>2</sup> According to official reports prepared under auspices of Intergovernmental Panel on Climate Change (hereinafter: “IPCC”), the world is on the course of achieving an increase of global average temperature by 1.5°C above pre-industrial levels at the mid-century if no real action is taken by global community to limit the emissions.<sup>3</sup> Although it

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<sup>1</sup> Although in public debate it is quite common to assign greenhouse effects solely to emissions of carbon dioxide, there are multiple other gases whose production contributes to global warming, including water vapor, methane, etc. See Cassia, R., Nocioni, M., Correa-Aragunde, N., Lamattina, L., ‘Climate Change and the Impact of Greenhouse Gasses: CO<sub>2</sub> and NO, Friends and Foes of Plant Oxidative Stress’, *Frontiers in plant science*, 2018, No. 9, pp. 2–3.

<sup>2</sup> Currently more than 97% of climate scientists agree that global warming has an anthropogenic origin. See Cook, J., Nuccitelli, D., Green, S.A., Richards, M., Winkler, B., Painting, R., Way, R., Jacobs, P., Skuce, A., ‘Quantifying the consensus on anthropogenic global warming in the scientific literature’, *Environmental Research Letters*, 2013, No. 8, pp. 1–2.

<sup>3</sup> *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, Masson-Delmotte, V., Zhai, P., Pörtner, H.-O., Roberts, D., Skea, J., Shukla, P.R., Pirani, A., Moufouma-Okia, W., Péan, C., Pidcock, R., Connors, S., Robin Matthews, J.B., Chen, Y., Zhou, X., Gomis, M.I., Lonnoy, E., Maycock, T., Tignor, M., Waterfield, T. (eds.), [https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15\\_Full\\_Report\\_High\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf) [accessed on: 26.02.2021].

is difficult to enumerate all potential problems previously unknown to humanity if the scenario predicted by IPCC is realized, on the foreground pointed out would be: continuous oceans acidification negatively affecting marine life, extreme droughts, flooding of coastal cities, as well as food and water shortages.<sup>4</sup> Thus, in popular culture it is common to refer ongoing climate changes to “climate catastrophe”.<sup>5</sup>

The mentioned consequence of water shortages is especially threatening for arid or semi-arid regions of the world, including California, North Africa and Middle East.<sup>6</sup> Several countries have already undertaken strategies that would assure some emergency water supplies for their citizens if the worst-case scenarios related to global warming are at stake. One of the boldest ideas came out in the United Arab Emirates. One of its nationals plans to tow into coast of UAE a giant iceberg of Antarctic origin that would provide a great source of fresh water for its inhabitants for many years. The whole operation would be organized under name “Iceberg Project” and run in early 2020s. However, the project itself might sound highly ambitious, but it is linked to serious risk and moreover, it may rise certain concerns of legal nature. This article has an aims to present the Emirati concept in the light of international law, make an academic comment thereon and consequentially explain whether the country is entitled, under international law, to tow an iceberg to its coast. The article shall not serve as a basis for explanation neither of environmental impact of the operation, nor its economic aspects.

## 2. “ICEBERG PROJECT” – AN OVERVIEW

The idea of towing icebergs is not somewhat new. Some small ones were already transported from southern Chile to Valparaiso mid-1800s.<sup>7</sup> But a concept of towing an iceberg from Antarctic came up in 1977 in Saudi Arabia under the directorship of Prince Mohammad al Faisal and help of French scientists. The prince established a special company called “Iceberg Transport International” that was preparing an operation of moving an iceberg to the shores of kingdom for a purpose of supplying its citizens with fresh water.<sup>8</sup> However, the plan was never materialized.

In 2017 in a country neighbouring Saudi Arabia – United Arab Emirates initiated a project that would make an original idea of Prince Faisal true. Abdulla Alsheni

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<sup>4</sup> Detailed breakdown of most potential negative social and economic consequences is presented by IPCC in its reports. See: *Global Warming...*, op. cit.

<sup>5</sup> See Kolbert, E., ‘Why We Won’t Avoid a Climate Catastrophe’, *National Geographic*, 25.03.2020, [https://www.nationalgeographic.com/magazine/2020/04/why-we-wont-avoid-a-climate-catastrophe-feature/?awc=19533\\_1600188260\\_709608ad992840ddb64a96eac0f399f7](https://www.nationalgeographic.com/magazine/2020/04/why-we-wont-avoid-a-climate-catastrophe-feature/?awc=19533_1600188260_709608ad992840ddb64a96eac0f399f7) [accessed on: 26.02.2021].

<sup>6</sup> Mehran, A., AghaKouchak, A., Nakhjiri, N., Nakhjiri, N., Stewardson, M.J., Peel, M.C., Phillips, T.J., Wada, Y., Ravalico, J.K., ‘Compounding Impacts of Human-Induced Water Stress and Climate Change on Water Availability’, *Scientific Reports*, 2017, No. 7, p. 1.

<sup>7</sup> Iceberg Project, National Adviser Bureau Limited, <http://www.icebergs.world/ourstory.html> [accessed on: 26.02.2021].

<sup>8</sup> Lundquist, T., ‘The Iceberg Cometh: International Law Relating to Antarctic Iceberg Exploitation’, *Natural Resources Journal*, 1977, No. 17(1), p. 11.

– an Emirati businessman and an owner of National Adviser Bureau Limited publicly announced his "Iceberg Project" aiming at towing an immense iceberg from the Heard Island in the South Pole to the coast of Fujairah, at the eastern part of the country. The project was already presented to UAE Ministry of Climate Change and Environment and Ministry of Infrastructure and Development and is scheduled to have its trial run launched in early 2022, and a final hauling in late 2023. The ultimate cost of the project is estimated at 100–150 million U.S. Dollars.<sup>9</sup> If the plan is successful, an iceberg might provide 20 billion gallons of fresh water; enough for consumption by million people for five years.<sup>10</sup> It is worth noticing that the official website of "Iceberg Project" also features information: *From Legal point of view; According to the freedom of the high seas [...], icebergs can be considered a water resource and subject to acquisition for private use anywhere in the world.*<sup>11</sup> Such expression suggests that the whole concept totally complies with international law (in particular law of the seas). But the idea of hauling icebergs by itself seems to be much more complicated from a legal point of view that it might stem from the project's website. Subsequent part of the article shall be devoted to the detailed analysis of Mr Alsheni's concept in the light of international legal measures.

As the government of the UAE has not declared any formal involvement in the plan, it shall be interpreted as being a purely private venture.<sup>12</sup>

### 3. DETERMINING THE STATUS OF ICEBERG

Although international law norms clearly distinguish water areas from landmass and thereby regulate the question of states' jurisdiction, no particular provision gives an unambiguous answer how ice (covering large surface of polar regions) should be treated. One of key problems in identifying its legal status is a fact that it is by its nature non-permanent.<sup>13</sup> It remains a solid structure only in cold temperature, but when the temperature rises above 0°C, it melts and transforms into water. Moreover, the polar ice itself appears in two different forms: ice-caps or glaciers covering land areas and ice floating on the water in form of e.g. icebergs. In the former case it is appropriate to apply norms that are normally applicable also to a base terrain for ice-caps (e.g. Antarctic Treaty for ice covering landmass of Antarctic). But in the latter situation such an interpretation seems unjustified. Ice formations floating on the seas have different density, as well as physical properties

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<sup>9</sup> Sanderson, D., 'Plan to Tow Iceberg to UAE 'Not Science Fiction', Claims Businessman', *The National UAE*, 11.07.2019, <https://www.thenational.ae/uae/environment/plan-to-tow-iceberg-to-uae-not-science-fiction-claims-businessman-1.885243> [accessed on: 26.02.2021].

<sup>10</sup> Baldwin, D., 'Trial Run for UAE Iceberg Project in 2019', *Gulf News*, 01.07.2018, <https://gulfnews.com/uae/environment/trial-run-for-uae-iceberg-project-in-2019-1.2244996> [accessed on: 26.02.2021]. Note that scheduled in the article is outdated, as the original timetable for launching the project was 2019 for pilot run and 2020 for final hauling.

<sup>11</sup> Iceberg Project, National Adviser Bureau Limited (<http://www.icebergs.world/index.html>).

<sup>12</sup> Sanderson, D., 'Plan to Tow Iceberg...', op. cit.

<sup>13</sup> See Machowski, J., 'The Status of Polar Ice under International Law', *Polish Polar Research*, 1992, No. 13(2), p. 157.

than pure water and therefore a direct application of legal norms relating to sea into the icebergs is unreasonable.<sup>14</sup>

What complicates the problem even more, no international treaty refers *expressis verbis* to status of icebergs, not to mention even question of their appropriation and towing.<sup>15</sup> But such a legal vacuum in that matter is not without reason: as it was mentioned in previous chapter, iceberg harvesting, although not being a totally new concept, never occurred on a bigger scale; neither states themselves nor private operators dared to haul larger pieces of ice floating on waters. Therefore, international community might have been simply showing a *désintéressement* in the matter of determining a status of iceberg.<sup>16</sup>

However, lack of expressed provisions does not automatically mean that it is impossible to assess whether certain actions undertaken in regards to icebergs are lawful or not. Many doubts arising in that matter might be dispelled by international conventions. Treaties of particular importance here are: Antarctic Treaty System (hereinafter: "ATS") and United Nations Convention on Law of the Seas (hereinafter: "UNCLOS").

#### 4. APPLICATION OF UNCLOS

UNCLOS is the main international treaty regulating the regime of maritime zones, adopted and signed in 1982 in Montego Bay, replacing four Geneva Conventions of 1958. Currently, there are 168 parties to the treaty.<sup>17</sup>

Although no single provision of the UNCLOS deals directly with icebergs (not to mention its harvesting), the treaty sets out the rules applying to particular maritime zones depending on their distance from the territory of coastal state: territorial sea, contiguous zone, exclusive economic zone (EEZ) and high seas. As for the territorial sea, its breadth is established by every state up to a limit not exceeding 12 nautical miles measured from baselines.<sup>18</sup> Generally, in the area covered by territorial seas, as well as in the airspace above it and its subsoil and bed, a coastal state may exercise all sovereignty rights.<sup>19</sup> In turn, in the contiguous zone, that may extend up to 24 nautical miles from the baseline, competences of the coastal state are more limited and are described in Article 33(1) of UNCLOS. As for the EEZ, extending

<sup>14</sup> Ibidem, pp. 157–158.

<sup>15</sup> Geon, B., 'A Right to Ice?: The Application of International and National Water Laws to the Acquisition of Iceberg Rights', *Michigan Journal of International Law*, 1997, No. 19(1), p. 282.

<sup>16</sup> A norm concerning status of iceberg, its potential appropriation etc. would have been crystallized in an international custom, rather than conventions if in a given period of time certain number of subjects would have repeatedly act in a certain way (in that case – tow icebergs) and equally accept such practice (*opinio iuris*). See Shaw, M.N., *International Law*, Cambridge, 2014, pp. 51–53.

<sup>17</sup> See Chronological lists of ratifications of, accessions and successions to the UNCLOS and the related Agreements ([https://www.un.org/depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm](https://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm); accessed: 26.02.2021).

<sup>18</sup> See United Nations Convention on Law of the Sea, United Nations Treaty Series, Vol. 1833, No. 31363.

<sup>19</sup> United Nations Convention on Law of the Sea.

up to 200 nautical miles from the baseline, UNCLOS in Article 56 empowers the coastal states with set of rights including conservation and management of natural resources, but at the same time provides all other states with certain rights and duties in Article 58. Finally, the area covering high seas is free from sovereignty, thereby granting all states freedoms of navigation, fishing, laying submarine cables and pipelines and overflight.<sup>20</sup> Certainly, it does not mean that states cannot exercise their jurisdiction over vessels sailing under their flag. In general a state has a right to exercise civil, criminal and administrative jurisdiction over their ships.

What stems from the above wording is a permission to undertake acts of harvesting ice (including icebergs) provided that it is located on high seas. That partially refers to what was mentioned on the "Iceberg Project" website (see previous chapter). Any vessels that sail in order to proceed with towing an iceberg should in advance make sure that it does not float on waters that belong to territorial sea, contiguous zone, or exclusive economic zone of a coastal state. Otherwise, such appropriation of an iceberg might be pertained as a breach of UNCLOS, empowering coastal states with significant rights exercised even in EEZ.

However, one should bear in mind that execution of rights granted by UNCLOS to states on high seas should have certain limitations. More precisely speaking, ice harvesting might be proceeded with provided that it does not unreasonably interfere with other activities related to freedom in high seas.<sup>21</sup> On the foreground one would mention protection of environment and conservation of living resources (Articles 116–120), duty to render assistance (Article 98), or the duty to avoid collisions with other vessels (Article 97). But if the process of harvesting runs with observance of reasonable use rules, it should not be pertained as violating provisions of UNCLOS.<sup>22</sup>

## 5. THE ANTARCTIC TREATY

The whole continent of Antarctica is under many circumstances absolutely unique. Not only it has the highest average altitude (ca. 2200 meters) in comparison to other continents, but is also covered mostly with ice. In fact, the Antarctic ice-cap spans through a surface of 14 million km<sup>2</sup>.<sup>23</sup> That equally makes it a largest source of fresh water on Earth, accumulating around 70% of its global volume.<sup>24</sup> What is more, Antarctica has a considerable impact on climate; its ice caps play role in cooling the

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<sup>20</sup> United Nations Convention on Law of the Sea.

<sup>21</sup> Lewis, C., 'Iceberg Harvesting: Suggesting a Federal Regulatory Regime for a New Freshwater Source', *Boston College Environmental Affairs Law Review*, 2015, No. 42(2), p. 457.

<sup>22</sup> *Ibidem*, p. 458.

<sup>23</sup> Snow or ice-free lands of Antarctica cover barely 0.34% of its surface; see Convey, P., 'Terrestrial biodiversity in Antarctica – Recent advances and future challenges', *Polar Science*, 2010, No. 4, p. 139.

<sup>24</sup> Marciniak, K.J., 'System Układu Antarktycznego: uwagi z perspektywy prawa międzynarodowego', in: *Układ Antarktyczny. Wybór dokumentów z wprowadzeniem*, Ministry of Foreign Affairs of the Republic of Poland (ed.), Warsaw, 2017, p. 17.

atmosphere, whereas the ocean around absorbs heat of the sun thereby reducing the global temperature.<sup>25</sup>

All those specific traits of Antarctica make it an important research area from the perspective of the whole mankind. That was one of key factors for drafting the Antarctic Treaty (hereinafter also called “the Treaty”) in 1959 on 1<sup>st</sup> December. That year, twelve states of the world held a Conference on Antarctica in Washington whose main aim was to regulate the status of the continent as a place forever reserved only for peaceful activities and international cooperation in scientific investigation.<sup>26</sup> Those aims are expressed in the Preamble of the Treaty itself. The Treaty is relatively short in contents; it comprises fourteen articles (marked by Roman numbers) plus mentioned Preamble. It entered into force on June 23<sup>rd</sup>, 1961 and currently has 54 parties.<sup>27</sup> For analysis conducted in the hereby article relevant are only its provisions of Articles I–VI.

First of all, according to Article I, exploitation of Antarctica should be performed without usage of military (prohibited is then establishing military bases, or fortification as well as weapon testing). Exemption relates to engagement of military forces in research activities. Wording of Article V goes even further, banning any nuclear trials on the continent. In turn, Article II guarantees all parties freedom of scientific investigation. Potential towing of an Antarctic iceberg would not breach any of those provisions, as such an operation has a peaceful purpose: acquiring a genuine source of fresh water. Certainly, if a ship designed to haul an iceberg is chartered, it should not be a military or an armed unit.

Nevertheless, the nature of the Treaty, making Antarctic in reality *res communis* – a terrain excluded from any state sovereignty,<sup>28</sup> complicates the issue of iceberg towing. Its Article IV deals with interests of: states that previously made claims regarding their sovereignty on certain parts of Antarctica; states that would make such claims in the future; and states that would never do so.<sup>29</sup> It stipulates that, *[n]o acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force.*<sup>30</sup> From that wording one would read that no state might effectively exercise its powers related to sovereignty on the lands of Antarctica. Additionally, as its lands are out of any state’s possession, the continent has no territorial sea (see previous

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<sup>25</sup> See Norwegian Polar Institute, *Global Climate Change*, [https://www.npolar.no/en/themes/global-climate-change/#The\\_climate\\_in\\_Antarctica\\_has\\_impact\\_worldwide](https://www.npolar.no/en/themes/global-climate-change/#The_climate_in_Antarctica_has_impact_worldwide) [accessed on: 26.02.2021].

<sup>26</sup> The conference lasted from October 15<sup>th</sup> until 1<sup>st</sup> December, 1959 and gathered representatives of following states: Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, Soviet Union, the United Kingdom, and the United States.

<sup>27</sup> See the full list of parties and their status (consultative and non-consultative): <https://www.ats.aq/devAS/Parties?lang=e> [accessed on: 26.02.2021].

<sup>28</sup> Shaw, M.N., ‘International Law...’, op. cit., pp. 385–389.

<sup>29</sup> Before Washington Conference, several states made claims on exercising their sovereignty over certain part of Antarctica; those were: United Kingdom, New Zealand, France, Australia, Norway, Chile, Argentina. See Marciniak, K.J., ‘System Układu Antarktycznego...’, op. cit., p. 18.

<sup>30</sup> The Antarctic Treaty, United Nations Treaty Series, Vol. 402, No. 5778 (1961), Art. IV(2).

chapter).<sup>31</sup> Ultimately, if then any object, like an iceberg, floats on the Antarctic waters, it is treated as being part of its area and Article VI explains how far it is extended. It stipulates that, [...] *Treaty shall apply to the area south of 60° South Latitude, including all ice shelves, but nothing [...] shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area.*<sup>32</sup> Taking all above mentioned into consideration one may claim that an iceberg that freely floats on seas around Antarctica is not a property of any state, which effectively makes it *res nullius*, as it is located on high seas (see more: previous chapter).<sup>33</sup> Therefore, its potential acquisition and subsequent towing would rather not violate any state territorial rights.

## 6. THE ENVIRONMENTAL PROTOCOL

Several decades after adoption of the Treaty, in 1991 in Madrid drafted was a Protocol on the Environmental Protection to the Antarctic Treaty (hereinafter referred to as "Environmental Protocol" or simply "Protocol"). Seven years later, on January 14<sup>th</sup>, 1998 it entered into force thereby creating a regime establishing a wide protection of flora and fauna of Antarctica and its associated ecosystems.<sup>34</sup> The text of Protocol is equally important for considerations on legal harvesting of icebergs.

What is worth mentioning at the very beginning, the Protocol in fact declared Antarctica to be a first continent that together with its maritime space constitutes "natural reserve" (Article 2).<sup>35</sup> However, the core provision is its Article 3, stipulating that, [t]he protection of the Antarctic environment and dependent and associated ecosystems and the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research, in particular research essential to understanding the global environment, shall be fundamental considerations in the planning and conduct of all activities in the Antarctic Treaty area.<sup>36</sup> Further, the same Article in paragraph 2 denotes that:

- activities in the Antarctic Treaty area shall be planned and conducted so as to limit adverse impacts on the Antarctic environment and dependent and associated ecosystems;
- activities in the Antarctic Treaty area shall be planned and conducted so as to avoid: adverse effects on climate or weather patterns, as well as air or water quality; significant changes in the environments; changes in populations of

<sup>31</sup> Lundquist, T., *The Iceberg Cometh...*, op. cit., p. 28.

<sup>32</sup> The Antarctic Treaty, United Nations Treaty Series, Vol. 402, No. 5778 (1961), Art. VI.

<sup>33</sup> Similar approach is taken by C. Lewis who analyzed three separate views to treating an iceberg: as *res nullius* (an object belonging to no-one), a private property under national-sovereignty claim, or as common property, so called *res communis*. Lewis, C., 'Iceberg Harvesting:...', op. cit., pp. 452–453.

<sup>34</sup> Rothwell, D., 'Polar Environmental Protection and International Law: the 1991 Antarctic Protocol', *European Journal of International Law*, 2000, No. 11(3), pp. 591–592.

<sup>35</sup> *Ibidem*, p. 594.

<sup>36</sup> Protocol on Environmental Protection to the Antarctic Treaty, United Nations Treaty Series, Vol. 2941, No. A-5778 (2013), Art. 3(1).

- species of fauna and flora and further jeopardy of the endangered species; degradation of, or substantial risk to, areas of significance;
- those activities shall be planned and conducted on the basis of information sufficient to allow prior assessments of impacts on the environment and dependent and associated ecosystems and on the value of the continent for the conduct of scientific research;
  - priority shall be given to activities of scientific research and those destined to preserve the value of Antarctica as an area for the conduct of such research, including research essential to understanding the global environment.<sup>37</sup>

The aforementioned provision clearly expresses that any activity (either conducted by a governmental or non-governmental entity, such as Mr Alsheni's company) should be as least intrusive to Antarctic environment as possible. In short, if anyone decides to tow piece of ice that no longer forms a part of Antarctica's glacial structure, such as an iceberg, should pay attention to fauna and flora of the continent and save a towing unit from potentially adversary incidents (like fuel leak, destruction of other ice formations, etc.).<sup>38</sup>

Another provision of the Protocol that should attract attention here is its Article 7 that reads as follows: *[a]ny activity relating to mineral resources, other than scientific research, shall be prohibited.*<sup>39</sup> For some that statement might seem as limiting the possibility of harvesting ice, if it is treated under the Protocol as "a mineral resource". However, helpful in that matter would be Final Act of the eleventh ATS Consultative Meeting which states that, *the harvesting of ice [is] not considered to be an Antarctic mineral resource activity; it was therefore agreed that if the harvesting of ice were to become possible in the future, it was understood that the provisions of the Protocol, other than Article 7, would apply.*<sup>40</sup> Thus, one can understand from this provision, that activity of harvesting icebergs that is not harmful to environment of Antarctica would not be unduly restricted by the Protocol.<sup>41</sup> Especially as no provision of the Protocol *expressis verbis* prohibits acts of exploiting ice for humanitarian purposes, including supplying water for population of arid regions.

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<sup>37</sup> *Ibidem* Article 3(2).

<sup>38</sup> Such an interpretation is based on wording of Article 3 paragraph 2(b)(iii) that imposes an obligation of conducting activities in a way they would not adversely affect its glacial environments. Certainly, an action destined to physically "brake off" a part of ice from the Antarctic glaciers and subsequently tow it would breach the rule stemming from the provisions. But if appropriated is an iceberg that spontaneously broke off from the ice, then such move seems to be legitimate under the Protocol's provisions.

<sup>39</sup> Protocol on Environmental Protection to the Antarctic Treaty, United Nations Treaty Series, Vol. 2941, No. A-5778 (2013), Article 7.

<sup>40</sup> See Final Act of the eleventh Antarctic Treaty Special Consultative Meeting. Different opinion was expressed *inter alia* by M. Patterson; see Patterson, M., 'Icebergs and international Law', *ILA Reporter*, November 2019, <http://ilareporter.org.au/2019/11/icebergs-and-international-law-matthew-paterson/> [accessed on: 26.02.2021].

<sup>41</sup> Similarly: Rothwell, D., 'Polar Environmental Protection...', *op. cit.*, p. 597.

## 7. CASE OF UNITED ARAB EMIRATES

Assessment of role of both UNCLOS and ATS in the "Iceberg Project" cannot be done without pointing at another important issue. It is not yet resolved under what flag a ship assigned by Mr Alshemi to tow an iceberg will operate. Nevertheless, it is quite probable that the vessel shall fly the flag of its "home country" – United Arab Emirates. Vital is to note here, that this state is neither a party to any instrument of ATS, nor to the UNCLOS.<sup>42</sup> Would this mean that none of norms expressed in aforementioned treaties is applicable to operation planned by Mr Alshemi?

When answering that question, it is indispensable to mention one of crucial principles of international law, namely *pacta tertiis nec nocent nec prosunt* ("treaties neither create rights nor impose obligations on third parties"). According thereto, United Arab Emirates as a state not being party to any of mentioned treaties has no obligation to observe their norms. Nevertheless, specific nature of both UNCLOS and ATS makes the case a little more complex.

The status of Antarctic Treaty (or Antarctic Treaty System as a whole) is an issue that raised many controversies. In particular strong is belief among several authors that the Treaty creates "an objective regime" – a set of rules applicable *erga omnes*.<sup>43</sup> Indeed an intent of applicability of ATS also to third parties stems from wording of its certain provisions. Already the Preamble stipulates, that *Antarctica shall continue for ever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord*, which clearly signals that the purpose of signatories was to establish the Antarctic continent a zone free from military intervention of any State.<sup>44</sup> Analogically, Article X of the Treaty states that, *[e]ach of the Contracting Parties undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to [its principles and purposes]*.<sup>45</sup> Doubtlessly, that provision establishes a duty for the whole international community not to engage on the Antarctic terrain in any acts that may be contrary to Treaty's principles. Such statement is strongly related to the nature of the continent itself – Antarctica, being one-of-a-kind piece of land on Earth, having such a great importance for the scientific research, global climate and consequentially the whole mankind, "deserves" a treaty system protecting it from unduly activity of any state in the world. Therefore provision of Article X is somehow "addressed" to international community *en bloc*. Finally, it is worth to note that so far, after nearly sixty years of the Treaty's adoption, no single state has ever undertaken any activity that would be perceived as contradictory to ATS' principles.<sup>46</sup> Taking into

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<sup>42</sup> United Arab Emirates have never acceded into ATS. See <https://www.ats.aq/devAS/Parties?lang=e> [accessed on: 26.02.2021]. As for the UNCLOS, UAE was one of its signatories, but have not yet ratified/accepted the Treaty. See [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en) [accessed on: 26.02.2021].

<sup>43</sup> Marciniak, K.J., 'System Układu Antarktycznego...', op. cit., p. 47; Fitzmaurice, M., 'Third Parties and the Law of Treaties', *Max Planck Yearbook of United Nations Law*, 2002, No. 6(1), p. 123.

<sup>44</sup> The Antarctic Treaty, United Nations Treaty Series, Vol. 402, No. 5778, 1961, Preamble.

<sup>45</sup> *Ibidem*, Article X.

<sup>46</sup> Marciniak, K.J., 'System Układu Antarktycznego...', op. cit., p. 47. Separately one would look at the question of customary law in regards to Antarctic Treaty.

account all aforementioned arguments, one may conclude that although United Arab Emirates is not a party to ATS, a vessel flying their flag assigned to tow an iceberg from Antarctic area should observe the rules of the Treaty if the whole operation is to be regarded as totally lawful in the view of international law.

Differently should be approached a situation with UNCLOS. The Convention itself is widely accepted by states of the world, but still several entities having maritime interests refrain from ratifying the document, including landlocked and coastal countries, like Iran, Turkey, Venezuela or the United Arab Emirates, that signed, but never entered into the agreement.

However, it does not mean that the country denies norms stemming therefrom. Currently, maritime claims of the UAE match those determined by UNCLOS – they recognize as territorial sea the water area extending to 12 nautical miles from the baseline; as contiguous zone the area extending to 24 nautical miles from the baseline and finally, as EEZ the area up to 200 nautical miles measured from the baseline.<sup>47</sup> What is more, multiple provisions of UNCLOS relating to breadth of territorial waters, sovereignty of states thereon, extent of exclusive economic zones etc. tend to be perceived as customary international law, thereby binding states regardless if they are parties to relevant conventions or not. That statement is strongly confirmed by relevant judgments of International Court of Justice (or “ICJ”). Already in case *Nicaragua v United States*, the Court referred to sovereignty in internal waters and territorial sea as forming part of customary international law.<sup>48</sup> Similar attitude towards the breadth of territorial waters and its delimitation the Court expressed in case *Nicaragua v Colombia*.<sup>49</sup> In turn, the concept of EEZ as being part of international custom was evoked by Court in judgment *Canada/United States of America*.<sup>50</sup> Interestingly enough, ICJ has not yet issued any judgment reaffirming that freedom of high seas on which stipulates Part VII of UNCLOS would be considered as customary international law. On the other hand, the Court addressed the question in relation to High Seas Convention of 1958, being of one UNCLOS “predecessors”. The Convention in its Article 2 refers to freedom of the seas belonging to states that is currently reflected in UNCLOS Articles 86–115; the Court also recognized it as customary international law in *Continental Shelf* case.<sup>51</sup> Vital is to note here, that rules enumerated above are just few of many others related to law of the seas that are considered by ICJ as custom. Others concern *inter alia* immunity of warships, navigation on straits, the continental shelf, etc.<sup>52</sup>

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<sup>47</sup> Central Intelligence Agency, *The World Factbook: Maritime claims*, <https://www.cia.gov/library/publications/the-world-factbook/fields/283.html> [accessed on: 26.02.2021].

<sup>48</sup> Judgment of ICJ, Case Concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States*), Merits, ICJ Reports 1986, para. 212.

<sup>49</sup> Judgment of ICJ, Territorial and Maritime Dispute (*Nicaragua v Colombia*), Merits, ICJ Reports 2012, para. 177.

<sup>50</sup> Judgment of ICJ, Delimitation of the Maritime Boundary in the Gulf of Maine Area (*Canada/United States of America*), ICJ Reports 1984, para.94.

<sup>51</sup> Judgment of ICJ, North Sea Continental Shelf (*Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands*), ICJ Reports 1969, para. 65.

<sup>52</sup> An accurate and up-to-date analysis in that subject was prepared by J. Ashley Roach. See Ashley Roach, J., ‘Today’s Customary International Law of the Sea’, *Ocean Development & International Law*, 2014, No. 45(3).

United Arab Emirates, as a probable state whose flag shall be flown by a vessel used for the purpose of "Iceberg Project" would be then obliged to comply with norms forming part of law of the seas. That simply means that if Mr Alshemi finalizes his ambitious concept, an iceberg selected for towing should be located on high seas, outside of other coastal states' sovereignty.

## CONCLUSIONS

It is indisputable that "Iceberg Project" under direction of Mr Abdulla Alsheni would be an ambitious and major logistical achievement if indeed realized in upcoming years. It would be fair to say also that it would somehow reduce negative impact of climate change for arid region of Arabian Peninsula, if the water harvested from an iceberg really is supplied for those that may suffer from water shortages. From both ecological and economic point of view it is better decision to provide water for people than risk melting of iceberg ultimately contributing to rising sea levels.

As for the legal aspects of the operation, above analysis clearly indicated that there exist no obstacle on juridical level to harvest an iceberg. However, the situation is not as simple as it is featured on the project's website suggesting that rules of high seas allow anyone to appropriate any object floating thereon. Provisions of UNCLOS and ATS require from potential appropriator of iceberg that they observe rules of environmental protection, norms related to navigation on other states' waters etc. And although the United Arab Emirates, that would be probably a state whose flag shall fly a vessel used in the project, is not a party to any of those treaties, it does mean that they would ignore their provisions. As for the ATS, its nature entails establishing "objective regime" requiring that all states of the world comply with its provisions, so that the goals of the Treaty (and Protocols thereto) are fulfilled. In case of UNCLOS, in the opinion of ICJ its multiple provisions relevant for the case have already become customary international law, binding upon states not being parties to the Convention. Hence the conviction that United Arab Emirates (or generally every state) would need to follow obligations stemming both from ATS and UNCLOS to make sure that operation within Project Iceberg is lawful.

It is vital to note at the final point that quite probably a need for more precise regulation of harvesting icebergs would arise regardless whether Mr Alshemi's concept is realized. International community, facing the growing threat of climate catastrophe would seek additional sources of fresh water necessary for their citizens if devastating droughts happen more frequently. In such conditions, icebergs would become attractive and desired stream of supplies and therefore additional provisions adopted on international level would be necessary in order to ensure just system of appropriating ice for all states of the world.

## BIBLIOGRAFIA

**Books and articles**

- Cassia, R., Nocioni, M., Correa-Aragunde, N., Lamattina, L., 'Climate Change and the Impact of Greenhouse Gasses: CO<sub>2</sub> and NO, Friends and Foes of Plant Oxidative Stress', *Frontiers in plant science*, 2018, No. 9.
- Convey, P., 'Terrestrial biodiversity in Antarctica – Recent advances and future challenges', *Polar Science*, 2010, No. 4.
- Cook, J., Nuccitelli, D., Green, S.A., Richards, M., Winkler, B., Painting, R., Way, R., Jacobs, P., Skuce, A., 'Quantifying the consensus on anthropogenic global warming in the scientific literature', *Environmental Research Letters*, 2013, No. 8.
- Fitzmaurice, M., 'Third Parties and the Law of Treaties', *Max Planck Yearbook of United Nations Law*, 2002, No. 6(1).
- Geon, B., 'A Right to Ice?: The Application of International and National Water Laws to the Acquisition of Iceberg Rights', *Michigan Journal of International Law*, 1997, No. 19(1).
- Lewis, C., 'Iceberg Harvesting: Suggesting a Federal Regulatory Regime for a New Freshwater Source', *Boston College Environmental Affairs Law Review*, 2015, No. 42(2).
- Lundquist, T., 'The Iceberg Cometh: International Law Relating to Antarctic Iceberg Exploitation', *Natural Resources Journal*, 1977, No. 17(1).
- Machowski, J., 'The status of polar ice under international law', *Polish Polar Research*, 1992, No. 13(2).
- Mehran, A., AghaKouchak, A., Nakhjiri, N., Stewardson, M.J., Peel, M.C., Phillips, T.J., Wada, Y., Ravalico, J.K., 'Compounding Impacts of Human-Induced Water Stress and Climate Change on Water Availability', *Scientific Reports*, 2017, No. 7.
- Roach, J.A., 'Today's Customary International Law of the Sea', *Ocean Development & International Law*, 2014, 45(3).
- Rothwell, D., 'Polar Environmental Protection and International Law: the 1991 Antarctic Protocol', *European Journal of International Law*, 2000, No. 11(3).
- Shaw, M.N., *International Law*, Cambridge, 2014.

**Reports**

- Central Intelligence Agency, *The World Factbook: Maritime claims* <https://www.cia.gov/library/publications/the-world-factbook/fields/283.html> [accessed on: 26.02.2021].
- Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, Masson-Delmotte, V., Zhai, P., Pörtner, H.-O., Roberts, D., Skea, J., Shukla, P.R., Pirani, A., Moufouma-Okia, W., Péan, C., Pidcock, R., Connors, S., Robin Matthews, J.B., Chen, Y., Zhou, X., Gomis, M.I., Lonnoy, E., Maycock, T., Tignor, M., Waterfield, T. (eds.), [https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15\\_Full\\_Report\\_High\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf) [accessed on: 26.02.2021].
- Marciniak, K.J., 'System Układu Antarktycznego: uwagi z perspektywy prawa międzynarodowego', in: *Układ Antarktyczny. Wybór dokumentów z wprowadzeniem*, Ministry of Foreign Affairs of the Republic of Poland (ed.), Warszawa, 2017.

**Internet sources**

- Antarctic Treaty, The; Parties; <https://www.ats.aq/devAS/Parties?lang=e> [accessed on: 26.02.2021].
- Baldwin, D., 'Trial run for UAE iceberg project in 2019', *Gulf News*, 01.07.2018, <https://gulfnews.com/uae/environment/trial-run-for-uae-iceberg-project-in-2019-1.2244996> [accessed on: 26.02.2021].
- Chronological lists of ratifications of, accessions and successions to the UNCLOS and the related Agreements*, [https://www.un.org/depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm](https://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm) [accessed on: 26.02.2021].
- Iceberg Project, National Adviser Bureau Limited, <http://www.icebergs.world/ourstory.html> [accessed on: 26.02.2021].
- Kolbert, E., 'Why we won't avoid a climate catastrophe', *National Geographic*, 25.03.2020, <https://www.nationalgeographic.com/magazine/article/why-we-wont-avoid-a-climate-catastrophe-feature> [accessed on: 26.02.2021].
- Norwegian Polar Institute, *Global Climate Change*, [https://www.npolar.no/en/themes/global-climate-change/#The\\_climate\\_in\\_Antarctica\\_has\\_impact\\_worldwide](https://www.npolar.no/en/themes/global-climate-change/#The_climate_in_Antarctica_has_impact_worldwide) [accessed on: 26.02.2021].
- Patterson, M., 'Icebergs and international Law', *ILA Reporter*, November 2019, <http://ilareporter.org.au/2019/11/icebergs-and-international-law-matthew-paterson/> [accessed on: 26.02.2021].
- Sanderson, D., 'Plan to tow iceberg to UAE 'not science fiction', claims businessman', *The National UAE*, 11.07.2019, <https://www.thenational.ae/uae/environment/plan-to-tow-iceberg-to-uae-not-science-fiction-claims-businessman-1.885243> [accessed on: 26.02.2021].
- United Nations Convention on the Law of the Sea*, [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=en) [accessed on: 26.02.2021].

## UNITED ARAB EMIRATES "ICEBERG PROJECT"

## – WOULD AN AMBITIOUS CONCEPT COMPLY WITH INTERNATIONAL LAW?

## Summary

In the ongoing climate crisis, more and more states of the world undertake initiatives that would reduce negative impact of dangerous growth of global average temperature, including droughts, drowning of coastal cities and water shortage. Recently, an ambitious idea to provide huge supplies of water for the population of the United Arab Emirates was initiated by one of Emirati businessmen – Mr Abdulla Alsheni, who plans to tow a huge Antarctic iceberg to the coast of Emirates. The plan itself is a logistic challenge, but at the same time may raise certain concerns on its compliance with international law. Hereby article has as an aim response to a question whether an act of towing an Antarctic iceberg would breach international law provisions, particularly those related to Antarctic Treaty System and law of the seas.

Keywords: iceberg, law of the seas, Antarctic Treaty System, climate change, international law

„ICEBERG PROJECT” ZE ZJEDNOCZONYCH EMIRATÓW ARABSKICH  
– CZY INICJATYWA TA JEST ZGODNA Z PRAWEM MIĘDZYNARODOWYM?

Streszczenie

Trwający kryzys klimatyczny wymusza na państwach świata podjęcie działań zmierzających do zminimalizowania negatywnych skutków wzrostu globalnej średniej temperatury, włączając w to wyniszczające susze, podtopienia miast leżących u morskich wybrzeży, a także deficyty wody pitnej. Ostatnio, pewna ambitna inicjatywa dotycząca zapewnienia ogromnych ilości zdanej do picia wody dla całej populacji państwa, w tym wypadku Zjednoczonych Emiratów Arabskich, wypłynęła od lokalnego biznesmena – Abdullaha Alsheniego, który zaplanował, aby przyholować ogromną górę lodową z Antarktydy aż do wybrzeży Emiratów. Sam plan stanowi oczywiście ogromne wyzwanie logistyczne, ale jednocześnie może rodzić pewne wątpliwości co do jego zgodności z prawem międzynarodowym. Artykuł niniejszy ma na celu odpowiedzieć na pytanie czy działanie polegające na holowaniu góry lodowej może w istocie stanowić naruszenie przepisów prawa międzynarodowego, w tym szczególnie Układu Antarktycznego oraz prawa morza.

Słowa kluczowe: góra lodowa, prawo morza, Układ Antarktyczny, zmiany klimatu, prawo międzynarodowe

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