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Antarctica – the Triumph of the Global Commons

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Abstract/Executive summary:

Antarctica is one of four internationally recognised global commons. Not only has nation state sovereignty remained unrecognised on the continent but it also run by the principles of peace, science and environmental protection – principles that are key to ga global commons.

The Antarctic Treaty has managed to fulfilled these principles by the influence of various NGOs throughout its history. The events of the 1980s to the early 1990s, seeing the Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA) being replaced by the Protocol on Environmental Protection to the Antarctic Treaty (The Protocol), further showed the interest and influence of the global community on the Antarctic Treaty System.

The challenge for the future is to remove the gap between the principle governing Antarctica in practice and the principle of governance for a true global commons. This would enable further cooperation between nations and NGOs, and allow the global community the voice in Antarctic issues it by definition should have.

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1. Introduction

The debate on global commons is often a strained and particular one. It is full of issues of sovereignty, of moral rights and political ideology. Phrases like “the Tragedy of the Commons” is often used and the concept, though recognised both within the academic world and in international diplomacy, it is often met with scepticism.

This essay argues that Antarctica is a great example of a global commons. It is generally recognised as a global commons, both by the members to the Antarctic Treaty, to non-member states and to the general population globally.

Antarctica is a more concrete, physical space than other global commons, such as outer space, and it has, and is, actively dealing with the issue of sovereignty. It is also a perfect example of the power the global community and non-state actors have in international politics.

This essay will first talk about the various global commons and their legal, political and economic implications. It will then use the events of the late 1980's - early 1990's to show the impact of external events and pressures on the political system governing the continent. Under chapter 3, the Convention on the Regulation of Antarctic Mineral Resource Activities and The Protocol on Environmental Protection to the Antarctic Treaty will be compared to each other, to show the shift in political values from economic interest (state interest) to protection (global interest). The last chapter will address the role of non-state, multinational actors in this political value shift.

The essay is based on recognised academic papers on the political legitimacy of the Antarctic Treaty and the role of NGO's to the change in direction during the late 1980's. It also use definitions of global commons used in international political theory, and practice. The essay also refers back to the original treaty texts themselves.

The Protocol on Environmental Protection to the Antarctic Treaty will be here from written as *the Protocol*. The Convention on the Regulation of Antarctic Mineral Resource Activities will be written as *CRAMRA*. The Antarctic Treaty will be written as *AT* and the Antarctic Treaty System will be written to as *ATS*. The Consultative Parties will be written as *C P* and the non-consultative parties simply as *non-C P*.

2. A Global Commons

Antarctica is one of four areas recognised by international law as global commons, along with the high seas, the atmosphere and outer space. According to the UN, these have historically been guided by the open access doctrine and the principle of common heritage (UNEP, 2013).

These have a few common features which labels them global commons. However, each one of these also have unique features which have different economical and political implications and requires different administrative tasks (Joyner, 1998; UNEP, 2013).

Jurisdiction and property is a major issue even though it in itself underscores the very concept of a 'global' 'commons'. The protection or usage of the environment is another major issue (Joyner, 1998; Shackelford, 2008). In regards to the latter two issues, they are more interlinked then it may at first seem, simply because if an area is to remain economically productive its environment must be kept in a healthy state. This means that even when considering a global commons for usage sustainable management must be implemented (Joyner, 1998).

The global impact the use of a certain natural resource or the global impact of an area have world wide are both reasonings behind designating areas as global commons, according to Joyner. An example of the former is the oceans and of the latter is outer space (1998). Both these reasonings can be applied to Antarctica.

There are different types of principles in international politics on how to govern international spaces which has no owner. These and the concept of global commons in itself have particular legal, political and economical implications on the area in question as well as for the, state or non-state, actors involved.

These principles are divided up into *Res Nullius*, *Res Communis*, *the Common Heritage of Mankind-concept* and *Res Publica*.

Res Nullius refers to an area who's ownership will accrue to the first taker with a valid legal claim. This claim is traditionally demonstrated by acting out ones' sovereignty – i.e. establishing permanent settlements and showing ability to regulate the area. This principle goes against the very global and commons aspect, and rather strengthen the mindset of conquering land for the nation state.

In stead of focusing on the legality of potential claims to the area, *Res Communis* implies that the area should be open to use by everyone. Today this applies to the atmosphere and outer space which is outside the reach of nation state enclosure. The area should be governed by an open access regime and anyone who can use the area may do so.

The two previous principles doesn't regulate use of the area and/or its resources. In *Res Nullis* benefits from such usage will go to the first taker, while in *Res Communis* benefits from usage will go to all or any who are able to use the area.

The Common Heritage of Mankind-concept shifts focus away from the nation state to humanity as a whole, making the global population a legal entity that should benefit and manage activities in the area. It implies that the area can never be claimed by a nation state because it is already owned

by all. Importantly, this area should be used exclusively for peaceful purposes and promote scientific research that is open and environmentally friendly. Benefits, economical and from scientific research, must be shared with all of humankind – not just certain governments, corporations or peoples. This concept, though hugely popular have attained little practical credibility in international politics.

The last of the four, *Res Publica*, refers to a public heritage regime that maintains and polices an area which maybe used by everyone and protection of the area is places above all other considerations. Just like rivers with in a state, the area essentially becomes a public trust. This principle is applicable to an area like Antarctic though is less suitable for more fluid and dynamic areas like the high seas (Joyner, 1998; Spectar, 1999).

The fact that Antarctica is enclosed by the open Southern Ocean, and not by sovereign states like the Arctic, creates both challenges and opportunities of it governance as a global commons.

According to the UN, many developing countries regard Antarctica as the common heritage of mankind. They criticise the ATS as a group of rich and technologically advanced countries holding exclusive right to the governing of Antarctica and its future.

At the same time the C Ps assert that they are managing the continent in the interest of all peoples. The definition of those interests should not, according to some countries be solely defined by the C Ps (UN, 2012) - issues which will be further discussed in chapter 4.

3. CRAMRA vs. The Protocol

Often portrayed as each others antithesis these two regimes are rather two different sides of the same coin. Both are a result of their time and shows how domestic politics play a major role in international Antarctic politics and the role of external pressures to this system (which will be addressed further in Chapter 4.). In terms of contents and regime development the regimes are rather the build up of the other and aptly portray the challenges with the global commons issue in Antarctica.

It took nearly eight years of long-drawn and complicated negotiations during the 1980's for the Parties to the Antarctic Treaty to agree on measures regulating mineral resource use. CRAMRA was created in 1988 but only two years after it's birth, and before its ratification, it had become discarded.

Concern about Antarctic mineral resources and their potential use was raised in the 1970s. The issue was first officially discussed at the 6th AT Consultative Meeting in Tokyo 1970. In the early 1970s a number of events put the issue firmly on the international agenda. The findings of ethane and methane traces during a deep sea drilling project by the *Glomar Challenger* expedition ('71-'72)

spurred speculations of hydrocarbon reserves in the Antarctic continental shelf. A year after the expedition finished, the Arab oil embargo of 1973-1974 heightened concerns about the limits of worldwide hydrocarbon reserves (Hayes, 1985; Herr, 1996). Joyner points out that these events made the commercial potential of Antarctic resource seem more interesting (1996, p. 154).

Security was at the time one of the two *raison d'état* to the AT (the other one being science) as such one of the main concerns for the regime was to avoid international discord.

At the XI Consultative Meeting in Buenos Aires 1981 the framework for CRAMRA was set up. This framework contained five points, the first two obliges the parties to continue to address the issue of Antarctic mineral resources and the second that the AT is to remain in its entirety. The following three points address the particular issues of CRAMRA. Number 3, states the importance of protection of the “unique Antarctic environment and of its dependent ecosystems”. Number 4, suggests that mineral resources in Antarctica are of interest to “all mankind” and the Consultative Parties should respect this. Number 5 simply repeats the provisions of Article IV in the AT and stresses that these will not be affected by the regime (XI ATCM, 1981).

The regime was set out to deal with two difficult issues - the use of Antarctic minerals while ensuring protection of the environment and dealing with the sovereignty issue. An INTIRCATE system was built within CRAMRA to fulfil this. Four institutions was to be set up, two with decision making power and a further two with advisory status. Three phases was to be considered. First, Prospecting which required no authorisation by CRAMRA. Second, Exploring which referred to evaluating specific mineral deposits and required consensus among the commission members. After consensus was reached a Regulatory Committee would be established for the particular area which could then issue a permit. This committee also had the power to remove a permit if the permit holder was proven to break the regulations within CRAMRA. The final phase, Development required a separate permit from the Regulatory Committee.

The Regulatory Committees was to be run by 2/3 majority vote and contain 4 claimant and 6 non-claimant state (CRAMRA, 1988; Joyner, 1996).

In the late 1980s the existence of a mineral resource regime was criticised by its opponents to undermine the open access and sharing of scientific information amongst treaty members and to promote mineral resource exploitation (Joyner, 1996; Joyner, 1998; Spectar, 1999). Voices were also raised within claimant states, particularly in Australia, which perceived the regime as “undermining the legal validity of Australia's territorial claim” (Joyner, 1996, p. 164).

After external pressures, mainly from the green movement (globally and within nation states) and criticism from non-member states through the UN (see chapter 4), CRAMRA was deemed unable to regulate mineral resource activities and their potential environmental impacts and stopped

by Australia in May 1989. France followed suit and soon a new approach to the matter had changed the political agenda (Joyner, 1996; Overholt, 1990).

Ultimately what started out as a proactive reaction to the potential of mineral extraction within ATS resulted in the legal recognition of Antarctica as a “natural reserve devoted to peace and science” (The Environmental Protocol [a], 1991), equal in importance to the values of science and security (Joyner, 1996; Spectar, 1999). The mineral resource regime was set aside for a protocol on environmental protection, the Environmental Protocol, signed in 1991.

The Protocol filled many of the issues that CRAMRA had been criticised for, particularly its ability to ensure the protection of the Antarctic environment.

Importantly the Protocol doesn't only deal with the environmental issues that could occur in relation to mineral resource exploration but deals with all activities present in Antarctica south of 60°S latitude (The Environmental Protocol [b], 1991; Joyner, 1996).

The implementation of protected areas, regulations over waste disposal, environmental impact assessments and the banning of mineral resource activities relating to potential exploitation are examples of such measurements under the Protocol. It also recognises that the measures and policies within the regime must be based on scientific research and cooperation amongst national scientific programs for environmental protection are encouraged. Issues regarding liability, emergency response and inspections, which contributed to the demise of CRAMRA, are dealt with under the Protocol.

To ensure that the Protocol be implemented, to become a Consultative Party to the AT the state must first be party to the Protocol. It is important to notice that there is no obligation to adapt the Protocol amongst non-consultative ATS members or, for that matter, non-members active in Antarctica (The Environmental Protocol [b], 1991; Joyner, 1996).

4. External Pressures; NGOs and non-members

The AT, just like Antarctica itself, is not as isolated as one might at first think. It is part of a global political system and has, is and will be effected by what is going in the rest of the world. Since it is and is recognised as a global commons (which type of global commons could be argued) external pressures is a factor to consider and to acknowledge in Antarctic politics.

Particularly the events during the 1980's up to the early 1990's attracted attention from the rest of the world to the Antarctic. Criticism of the mineral resource treaty (that later became CRAMRA), of the governance system (the ATS) spurred involvement from new and many NGOs as well as interest from non-member states. The very nature of Antarctica as a global commons was also brought to light and the righteousness of the AT member states' activities and 'guardianship'

questioned.

The ATS has since its beginnings been strongly influenced by a single, so called, 'elite expert' NGO, the Scientific Committee on Antarctic Research (SCAR). SCAR has played an influential role as it is seen as “vital to the *raison d'être* of the Treaty” (Herr, 1996, p. 97).

As mentioned in chapter 3, the issue mineral resources became an international concern in the 1970s and Antarctica was in the limelight due to its perceived potential for exploitation. The expanding krill and finfish fisheries (regulated by CCAMLR since 1982) as well as the UN's third meeting on the Law of the Seas added a sense of urgency within the ATS and to the green movement (a number of mostly 'promotional' environmental NGOs) (Herr, 1996; Joyner, 1996; Spectar, 1999). The NGOs within the green movement justified their interest and actions in Antarctica by claiming to speak for the interests of the unrepresented and underrepresented global, general public. The major players were the International Union for the Conservation of Nature (IUCN) and the Antarctic Southern Ocean Coalition (ASOC), which were later joined by Green Peace and Friends of the Earth.

The green movement during this period focused primarily on raising mass awareness of the environmental threats to the continent, to criticise the legitimacy of the ATS and to counter the pressures of economic development. Worth noticing is the fact that no industry organisation developed to promote their interests and such the green movement opposed the nation states directly.

Not all NGOs in the green movement focused on raising awareness, the IUCN, which has a similar organisation structure to SCAR with its membership primarily drawn from science associations, gained formal access to the ATS and worked with SCAR on a number of projects, the preparation of CCAMLR being one of them (Herr, 1996).

In the late 1980's Green Peace played a very visual part in raising awareness of Antarctic. Through their ethos of direct action they bluntly questioned the ATS member states's actions and raise support to make the entire continent a world park, a part of the common heritage of mankind. Interestingly enough, their tactics was to act as though they were a formal member to the AT. They set up a working research station (which lasted for five years) and tried to perform reciprocal inspections of other stations.

According to Herr, NGOs play a similar role in the ATS as they do in domestic politics, legitimate processes and outcomes, contribute to maintenance of the regime, provide knowledge, and represent various interests (1996). National NGOs had a significant impact on the domestic level during the campaign against CRAMRA, the Sierra Club in the US is such an example (Herr, 1996).

The reasons behind the Australian government not to sign the CRAMRA agreement in 1989, is a

good example of external pressures' impact on the decision making of the ATS.

Four major environmental disasters had struck polar waters in 1989, three in Antarctic waters and the major oil spill by Exxon Valdez in Alaska, which leaked 11 million gallons of crude oil into the fragile arctic waters and ecosystems.

The international publicity generated by these events along with increased domestic awareness on environmental issues, especially related to the widening ozone hole.

The French government followed suit, influenced by the rise of green politics in France and the influential petition movement lead by the famous ocean explorer Jacques Cousteau (Joyner. 1996).

Another feature of the time was an “alliance of interests between some of the NGOs opposed to the proposed minerals convention and state interests opposed to the Antarctic Treaty. The arena for this alliance was the United Nations” (Herr, 1996, p. 102).

This started in 1982 when Malaysia decided to bring the Antarctic, as the common heritage of mankind, to the UN. The 'Question of Antarctica' was put on the annual agenda of the General assembly in 1983.

Some NGOs saw the benefits of a greater UN involvement in the ATS or even the potential for replacing the ATS entirely. They argued, along with some nations, that the UN would be the “most appropriate authority to monitor, administer and enforce the various scientific and non-scientific activities in Antarctica” (Yahya, 2002) bringing Antarctic under the governance of the UN

This would secure a fair access to Antarctica and to Antarctic decision-making by all nations, thus making it a global commons truer to the name (Abu Samah et al., 2007; Yahya, 2002; Spector, 1999).

The involvement of external pressures during the late 1980s enabled and pushed for a major shift of direction for Antarctic politics, from resource exploitation to environmental protection. Which it, along with political considerations, successfully managed (Joyner, 1996; Herr, 1996; Spector, 1999; Hayes, 1985).

5. Conclusion: Antarctica - a Triumph for the Global Commons

“The fact that the 'question of Antarctica' is today on the UN agenda indicates the reality that there is a debate in the international community over the future management of the continent” (UN, 1985). Even though the 'question of Antarctica' was out off the UN agenda, the 2012 UN *SECRETARY-GENERAL'S FIVE-YEAR ACTION AGENDA* showed renewed interest in Antarctic issues. Under the chapter 'General Imperatives and Opportunities' it states it shall “work with Member States to make Antarctica a world nature preserve” (UN, 2012, p. 5).

The role of NGOs to the AT has always been important. SCAR plays a vital part to almost all decision making within the ATS and new NGOs, which predominately had been involved since the resource period of the 1980's, are recognised for their contribution to the decision-making process. Today they can participate on the annual Antarctic Treaty Consultative Meetings as invited experts and are also formally recognised as expert advise in for example CCAMLR (ATS, 2014; Herr, 1996). Importantly, some of these NGOs sustain their influence on the basis that they represent the interests of the general public.

Today NGOs rather than oppose the ATS is working within it and towards its success. The newest NGO within the ATS is the tourism industry representative the International Association of Antarctica Tour Operators (IAATO), who follows this trend (Herr, 1996).

Non-member states, particularly through the UN, also play an important role as observers to the health of the system and the values of Antarctica as a global commons.

A stronger recognition of Antarctica as a truly global commons, will be preferable and potentially create clearer more accountable politics, but doesn't necessarily require a global management. Joyner argues a "regional administration may be more appropriate and more effective" (1998, p. 26). Many nations outside the ATS, despite criticism, recognise the trustee role it plays in protecting the Antarctic environment (UN, 2012). Overholt (1990), Joyner (1996 & 1998) and Spectar (1999) separately support the ATS continuing to regulate Antarctica and argue it should move towards an over arching world heritage park regime for all mankind.

Critics to the global commons concept often bring up 'the Tragedy of the Commons' which argues that an individual's (state or non-state) rationale will have negative impact on the rationale of the collective by "brining about the inefficient use and eventual destruction of the commons" (Joyner, 1998, p. 29). However, the creation of a global regime, like a world heritage park, and the application among individual actors of that regime could prevent this.

Today Antarctica seem to be treated as a *Res Nullius* by the claimant states while is is seen as a *Common Heritage of Mankind* by others in international politics. Its global impact on the earths environment, however, puts it under the *Res Publica* principle of management of international spaces, even more so than the concept of *Common Heritage of Mankind*. This principle would enable a regionally located but internationally run regime which allows for open access by all nation states yet put environmental protection above all other considerations. This would join the wishes of both the current ATS members who find the governance beneficial, the non-member nations that wish fair access and the global community's wish to keep Antarctica as a world park.

Because of this divide between the principle that should govern Antarctica and the principle that governs it in practice it would, this essay argues, be to the benefit of all to agree and specifically

state, within the AT, in the UN and amongst the global community, which type of principle shall govern the actions on the continent. This would enable further cooperation between nation states and NGO's on Antarctica and Antarctic issues as well as remove the hindering power of domestic politics on politics in global commons.

If this was possible Antarctica could also serve as a stepping stone for governance on other international spaces.

“Hammering out an internationally supported consensus on Antarctica is a huge task requiring time and patience. ... Yet such a consensus is the only way to prevent a tragic plundering of the silent continent, and to maintain Antarctica as a symbol of peaceful international cooperation and environmental protection.

A good place to start would be the development of closer working relationships between the parties to Antarctic regimes and the international organizations within and outside the UN system that have responsibilities for science and technology, conservation, and environmental management.” (UN, 1985).

The membership of the AT grows and the gaps between the influence of the developed nations and the developing nations shrinks - however, still in favour of the developed nations. One must consider if this truly mean that the ATS represents the interests of humanity.

If Antarctica is a global commons, which I believe very few nations, ATS-members or not, would agree with, then it is the interest of the general public, represented by governments, a variety of NGOs and public movements, that can speak for the views, wishes and wants of humanity as a whole.

Antarctica is a triumph for the concept of global commons. The understanding of Antarctica's influence on the earth's environment and today's interconnected world shows that the mindset of nationality and the national ownership is slowly being replaced by the notion of humanity as a whole and the idea that a healthy global environment is to the benefit of all.

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REPRESENTATIVE OF MALAYSIA TO THE UNITED NATIONS

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