**Bringing global institutions to collaborate with regional regimes: Towards a Role for the International Seabed Authority within the Antarctic Treaty System**

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**Abstract**

The Antarctic continent and Southern Ocean management is regularly cited as an example of good governance, understood here as a network of autonomous but interdependent actors, institutions and rules interacting together on an horizontal interplay to manage a specific area. Indeed, a complex system, the Antarctic Treaty System (ATS), has been set up in 1959, and progressively expanded through the adoption of various instruments – such as the 1980 Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) or the 1991 Protocol on Environmental Protection to the Antarctic Treaty (the Protocol) –, the creation of various institutions, and the subsequent implication of several actors in the decisional process.

The ATS has had many occasions to show its resilience and adaptive abilities to arising challenges. Over the last two decades, however, the ATS has attracted criticism. Indeed, its reaction to climate change, for instance, has been slow, which has weakened the ATS usual rhetoric based on Antarctic specificity, while revealing the need to address such global threats in global forums. Other issues call on similar conclusions. The current ban of any activity relating to mineral resources, due to last until 2048 at least, might also call for a more global solution. Indeed, despite the ATS reassuring discourse, Claimants’ submissions to the Commission on the Limits of the Continental Shelf,[[1]](#footnote-1) combined with the possible lift of the current prohibition in the near future under the Protocol’s article 25, has created serious concerns about the consequences of a future exploitation of the Southern Ocean’s seabed, which cannot be easily dismissed.

Could the International Seabed Authority (ISA) be part of a solution to the ATS crisis? The ISA, which manages the seabed beyond the limits of national jurisdiction on behalf of mankind as a whole, is sometimes described as a mere mining institution, but it has actually implemented and developed conservation tools and approaches similar to the ones applied within the ATS. Keeping in mind the ATS’ various achievements and positive outcomes, the existence of two main similarities between the ATS regime and the Area’s regime points towards a possible collaboration between ATS and ISA institutions. Stakeholders, first, are very similar. Indeed, both regimes not only involve states, but also representatives of various actors such as international organizations, non-governmental organizations, as well as industries. A second similarity lies in the nature of some tools and principles. Indeed, both regimes have adopted and developed tools based on identical principles, that is, on ecosystem and precautionary approaches.

Against this backdrop, the author proposes to briefly outline the evolution of the general legal context that could allow for such a collaboration, before analyzing the nature and scope of some specific conservation tools adopted by the ISA which could be introduced within the ATS, in order to preemptively tackle any possible future exploitation. Some thoughts will finally be given to other situations where cooperation with global institutions contributed to enhance regional regimes.

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Nicolas Kempf is a Ph.D. candidate at the Université de Montréal, under the supervision of Professor Suzanne Lalonde. Mr. Kempf’s research examines Antarctica’s deep seabed legal regime, and is hence at the crossroads of various legal streams, including the Law of the Sea, International Environmental Law, and Polar Law. He received his Master’s degree from Université de Nantes, France, and had previously graduated in Law from Université de Strasbourg, France. Mr. Kempf has had occasion to teach International Law and has presented his research in several forums, including the 2019 Polar Law Symposium, the 2019 CCIL annual conference, and the Human Sea 2018 conference. Mr. Kempf is currently a graduate fellow for the North American Arctic Defence and Security Network, as well as for the Université de Montréal’s Center for International Studies. In 2018 and 2019, he was awarded a CIGI ILRP doctoral scholarship with the opportunity of a summer residency at CIGI in Waterloo. He also recently attended the Hague Academy of International Law, for which he was awarded a scholarship by the Academy. In January 2021, he will be lecturer in international law at the Université de Montréal’s Faculty of law.

1. Claimants are states having agreed, under the Antarctic Treaty’s article IV, to freeze their claims to parts of Antarctica while the treaty is in force. These states have either reserved their rights to an extended continental shelf for now, or presented a submission to the Commission on the Limits of the Continental Shelf with an instruction requesting the Commission not to take any action for the time being with regard to the information relating to continental shelf appurtenant to Antarctica. [↑](#footnote-ref-1)