After the Protocol: Problems and Prospects for Antarctica

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We thought: we are beggars, we have nothing,
But as we lost one thing after another,
So that each day became a Remembrance Day –
We began to compose songs
About God’s great munificence
And about how rich we once had been
Anna Akhmatova, 1915

INTRODUCTION

The Antarctic and Southern Ocean Coalition, ASOC, was formed in 1977 in response to emerging and escalating threats to Antarctica and the Southern Ocean. Those threats arose primarily from resource extraction proposals – such as minerals, oil and gas exploration, and of course marine fisheries. There were also other human activities – scientific programs, tourism – that were increasing in scale and with them a range of impacts, many unknown or poorly described.

At that time, there were few provisions for environmental protection in the Antarctic, and ASOC members believed there was little will by national governments to pro-actively prevent permanent damage to the Antarctic marine and terrestrial environments. At that time, nations were privately discussing the feasibility of extracting oil and gas from Antarctica, and were finally starting to talk about the need to regulate overfishing. ASOC has focused on Antarctica being managed as a "World Park," in which human activities are tightly regulated to minimise impacts on its fragile environment. We focused first on the negotiation of CCAMLR to conserve the fish resources of the Southern Ocean which had begun to experience the same levels of over-fishing that were wiping out northern hemisphere fish stocks. We then opposed the negotiation of the Minerals Convention, CRAMRA. Finally, governments agreed to put in place an environmental protection regime and a mining ban - the essence of the World Park idea.

24 years later, ASOC now consists of 230 conservation organisations in 50 countries with a secretariat based in the United States of America. Sadly, we remain extremely concerned that the Antarctic Treaty System still does not have
the will to ensure that environmental protection takes precedence in the planning and conduct of all activities for which it is responsible.

THE CAMPAIGN TO SAVE ANTARCTICA

By 1976, several nations had launched commercial harvesting operations for krill. Concerned that a rapid escalation of the krill fishery could precipitate the demise of the Southern Ocean marine ecosystem, ASOC initially focused on the negotiation of the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) that was being developed in response to these concerns. We convinced governments to adopt an "ecosystem as a whole" approach as the Convention was being negotiated. CCAMLR was adopted in 1982, and even today is still unique among fisheries agreements in its declared commitment to considering the impact of existing or proposed fisheries on the entire ecosystem, and not just the harvested species.

One of CCAMLR’s first challenges was preventing the collapse of the krill fishery in the 1980s. This succeeded, not because of good science and strict enforcement, but because the Soviet Union, which was by far the largest krill-fishing nation, collapsed and funding for its distant water fishing activities ended.

The next battle for ASOC was the campaign against the Minerals Convention (CRAMRA). In June 1988, when CRAMRA was completed, ASOC lobbied against signing the agreement. ASOC’s concern was not only that mining activities would inevitably pose unacceptable risk to the Antarctic environment, but that it could destabilise the region politically. Worse, CRAMRA would have established the property rights regime essential for mining to proceed - and to that extent actually increased the likelihood of mining. As we all know, Australia and France were the first countries to indicate serious reservations about CRAMRA, leading to its demise in 1989 when governments agreed to replace it with an environmental protection regime and a mining ban.

ASOC then articulated a model for environmental protection. This case was best reflected in the Environmental Protocol, signed in 1991 after just two years of negotiation.

THE PROTOCOL

The ratification of the Protocol on Environmental Protection to the Antarctic Treaty on January 14, 1998 signalled a dramatic change in attitude towards the full and permanent protection of Antarctica. It represented a milestone in our 21-year campaign to ensure that environmental protection was the fundamental consideration in the planning and conduct of all activities in Antarctica.
As many people here today know, the Protocol bans all commercial mining for at least 50 years from the entry into force of the Protocol, and applies to all activities except those regulated by other conventions, specifically relating to the great whales (International Convention for the Regulation of Whaling, ICRW), seals (Convention for the Conservation of Antarctic Seals, CCAS) or fisheries (Convention on the Conservation of Antarctic Marine Living Resources, CCAMLR).

It is directed to “comprehensive protection of the Antarctic environment and dependent and associated ecosystems” and requires prior assessment of the environmental impact of all activities by an obligation to conduct Environmental Impact Assessments prior to the commencement of those activities.

The technical annexes, with provision for more as required, also institute mechanisms to set aside large protected areas, provide legally-binding measures governing waste disposal and marine pollution, and create a Committee on Environmental Protection.

Despite the significant achievement of Protocol ratification (with the exception of Annex V), we are still faced with the serious environmental threats posed by resource extraction and exploitation, both direct and indirect in origin.

CURRENT THREATS

The recent picture of fisheries activities within the CCAMLR area suggests a substantial - and perhaps widening - gap between precautionary theory and practice. Illegal, unreported and unregulated (IUU) fishing that began in the early 1990s in the southwest Atlantic Ocean (between South America and Antarctica) has spread to most of the waters around Antarctica. The primary target is the lucrative Patagonian toothfish. In November 1999 CCAMLR adopted a Catch Documentation Scheme (CDS) to track the international trade in toothfish and to close markets to IUU-caught toothfish. Despite this, in its first year of operation, IUU or “pirate” fishing increased by 50%, continuing to drive down toothfish populations around sub-Antarctic islands and plateaus. China, which is not a CCAMLR member, and Canada, which is, have stated that they will not participate in the CDS, undermining efforts to shut down the market for illegal fish.

Recently, the number of countries and boats participating in the fishery has increased. Despite research indicating a decrease in krill recruitment, and a trawler-sized hole in the scientific information on the effects of increased krill fishing on predator species, CCAMLR XIX increased the krill quota for the 2001 season and as many 19 boats are planning to fish for krill.

Despite a 1986 global ban on commercial whale hunting by the International Whaling Commission, and additional legislation established in
1994 permanently banning commercial whaling across the entire Southern Ocean region, the Japanese continue to kill hundreds of minke whales in the region each year under a loophole of “scientific research”. The failure of the International Whaling Commission and the Antarctic Treaty System to prevent such pseudo-scientific activities in Antarctic waters is a constant disappointment to ASOC.

An estimated 13,200 tourists visited Antarctica during the 2000/01 season, twice the number that visited when the Protocol was signed in 1991. The availability of helicopters on board several of the tour ships allows visits to pristine inland sites. The rising number of tourists continues to be of concern since it is still not known if the region’s flora and fauna will be impacted irreversibly. A disturbing development has been the introduction of tour boats that can accommodate over 1000 passengers, with the associated increased potential for negative environmental impact. Repeat visits to the same areas are common, a situation that could ultimately lead to cumulative impact on wildlife populations. Little information is available on cumulative impact in the Antarctic context, even though the Protocol requires it to be considered when planning activities. Equally disturbing is the increase in "adventure" tourism: kayaking, surfing, skydiving, and scuba diving are being conducted by private parties, and offered by tour operators who tout the “pristine” nature of the sites being visited. Unfortunately, at present these activities comply with the "letter" if not the spirit of the Protocol, making it impossible to block them. It is likely that novel tourism will increase at a faster rate than traditional tourism based on a growing tourist interest in “extreme” experiences.

Evidence indicates that climate change and depletion of the ozone layer are impacting Antarctica's ice shelves, plants and wildlife. Last year, the "ozone hole" was the largest ever, covering over 11 million square miles. 2000 also marked the first time the depletion has directly affected populated areas when it extended over the southern tip of South America.

**STATUS OF RATIFICATION**

ASOC is encouraged by the ratification of the Protocol on Environmental Protection to the Antarctic Treaty. However implementation is slow, and many Consultative Parties are not doing enough to implement the Protocol domestically. Ultimately, countries must adopt enforceable laws and regulations that uphold the language and spirit of the Protocol.

Additionally, proponents of Antarctic activities must be aware of, and comply with, their obligations under the Protocol – which includes tourist operators and scientists. So far the Protocol has not been implemented by all Parties, and there is insufficient consistency in approach among the member states about how to apply its provisions. Faithful implementation of the Protocol
is required to assure that the Antarctic environment is afforded the protection that the Protocol was intended to provide.

However we are all aware that entry into force of the Protocol will not ensure comprehensive protection for the Antarctic environment in the absence of rules on liability in case of environmental damage. As we know, the Protocol was originally signed with this one large gap remaining. Provisions for liability for environmental damage are essential to establish responsibility if there is an accident, and to ensure the highest standards of care in all operations. By providing a legal obligation to that effect, it will give Antarctic operators (both governments and non-governmental) an incentive to be more cautious in the conduct of their Antarctic activities. In addition, it sends a clear message to the world that in Antarctica, the protection of the environment is the major consideration for all human activities.

THE FUTURE

As to the future, given current trends, we could rightly say for Antarctica it is bleak.

Nowhere is this more obvious than in CCAMLR. While we could all acknowledge that CCAMLR has sound foundations, it has not been able to prevent the expansion of fishing for toothfish, and seems unwilling to flex any managerial muscle despite clear indications that the system is under stress. Contracting Parties baulk at the concept of recruiting complimentary regimes to assist in the fight to close all available avenues to fish poachers. For example, the Convention on International Trade in Endangered Species, or CITES, does lend itself to assisting CCAMLR nations in their quest for ecologically sustainable Antarctic fisheries. Unfortunately, the loud and dollar-assisted demands of the fishing industry have changed the priorities of previously strongly conservation-minded countries, including Australia. Now Australia couches its approach in Antarctica in terms of the “national interest”, a concept that is ideologically misaligned with the principles of international cooperation that are supposed to underscore Antarctic policy.

This is not to say that Australia has not taken up some of the challenges of pirate fishing and its impact on bycatch species, in particular seabirds. However, these moves seem to be increasingly with an eye on the pie, being ever vigilant to ensure Australia gets a slice of the carve-up.

Most recently, the Australian Government has loudly proclaimed its intention to “stake its claim” on krill. This marked change in position gives no comfort to ASOC, if a historically precautionary government can so radically change its approach to the human use of Antarctic marine living resources. It
surely signals what can only be described as the beginning of the end for Antarctica’s wildlife.

Lately, the highest profile issue in the Southern Ocean has been pirate fishing. ASOC member Greenpeace has conducted two recent expeditions to the Southern Ocean to investigate and expose toothfish poaching, and has actively participated in international efforts to track down the pirates, their companies and the port states that provide the pathways into the international fish trade.

It’s important to remember that ASOC is not, in principle, anti-fishing, but it is strongly opposed to unsustainable fishing. The failure of CCAMLR to deal with toothfish piracy in the Southern Ocean has, for some years now, rendered the licensed fishery unsustainable.

That is why ASOC is calling for an immediate moratorium on the fishery, enforced by an international trade ban. These measures, while clearly unpalatable to those CCAMLR members with domestic fishing interests in Antarctica, is the only way for CCAMLR to regain control. A moratorium need not be permanent. However it must not be lifted until the illegal operators have been driven out, the scientists given the time and resources to assess the impacts of the fishery on the ecosystem, and the future viability of commercial operations assessed in light of this assessment and the ability of CCAMLR to prevent a return to open slather piracy.

In 2001, we know it is a problem. We know who the main culprits are. We know what species are under threat – be they fish, seabird or mammal. We know the trend in tourism is upwards. We know that climate change and ozone depletion will continue to place additional pressures on the system. For every step forwards, it seems, there are several backward. Quite frankly, the clock is ticking for Antarctica and her oceans.

ASOC urges all those who believe in the Antarctic Treaty System, its founding principles, and the Environmental Protocol, to take the opportunity while we still have it and explore ways to move forwards, to think ahead. We need to ask some hard questions about how we think Antarctica can and should be used, for example:

- Can theoretically sustainable commercial fishing in Antarctica ever be truly sustainable in practice when monitoring and enforcement is not a practical option? Indeed, is fishing in this region an appropriate use?
- If we agree that tourism is a legitimate and appropriate use of Antarctica, how many tourists can the region support annually? Should some areas be off limits?
• How will the Antarctic Treaty System states ensure marine protected areas are designated in the face of fishing industry opposition and the constraints of consensus decision making?

The threats to this region are on the increase, and the regulatory framework designed to prevent destruction of this last wild place on earth is, at best, ineffective when the political will is increasingly absent. However ASOC believes the broader community will not allow Antarctica to be colonised, drilled, trawled, trampled and polluted.

Antarctica does not belong to a cartel of resource-hungry governments. It is a special, beautiful, wild and free place. It is our collective responsibility to deliver the Antarctica’s future. That time is now.

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