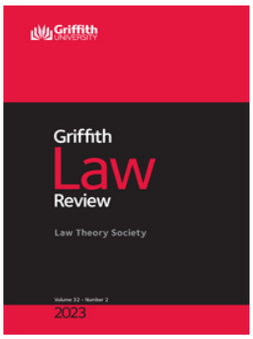

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Extraction and jurisdiction: forms of law and the Antarctic Treaty System*

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ABSTRACT

This article joins a conversation that examines the dynamics of extraction in global space and their relationship to practices of authorisation in international law. The article offers an analysis of a specific historical debate that occurred through the negotiation of the since-abandoned Convention on the Regulation of Antarctica Mineral Resource Activities (CRAMRA). The debate was largely over whether the Antarctic Treaty System (ATS) should continue to govern Antarctica. This article argues that while extracting mineral resources from Antarctica has now been foreclosed, the jurisdictional form that remains is part of the enabling legal infrastructure that patterns contemporary global extraction. Specifically, this jurisdictional form entails the reassertion of international legal authority grounded in colonial territorial claims, and a reappropriation of the Common Heritage of Mankind principle (CHM) to appeal to a construction of universality that repeats the familiar colonial move of locating 'humanity' largely in the Global North. In the contested times of the Anthropocene, discussion of the ATS rightly celebrates an instance of restraining corporate extraction of hydrocarbons from an unstable climactic ecosystem. However, we could also take account of how the ATS' jurisdictional form could contribute to contemporary global extraction and its highly unequal consequences.

KEYWORDS

International law; extraction; jurisdiction; authority; Antarctic Treaty System; common heritage of mankind; Convention on the Regulation of Antarctic Mineral Resource Activities

I. Introduction

This article joins a conversation that examines the dynamics of extraction in global space and their relationship to practices of authorisation in international law.[1] The article offers an analysis of a specific historical debate that occurred through the negotiation of the since-

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[1]See among others Ranganathan (2019a); Ranganathan (2019b); Craven (2019); Storr (forthcoming); Storr (2020a); Mickelson (2019); Feichtner (2019); Feichtner and Ranganathan (2019).

abandoned Convention on the Regulation of Antarctica Mineral Resource Activities (CRAMRA). The debate was largely over whether the Antarctic Treaty System (ATS) should continue to govern Antarctica. My analysis aims to pay attention to the relationship between this once-potential, localised set of mining regulations and more ongoing contestations about claiming authority over extractive projects and activities in international space. There have since been doctrinal changes that mean mineral resources can no longer be extracted from Antarctica.[2] However, work in the scholarly tradition of extractivism points to a broader relation of accumulation and dispossession,[3] meaning that we can look beyond physical sites of extractive projects to understand how different elements of this relationship take shape.[4] This article's argument builds on insights from this tradition. It is that while extracting mineral resources from Antarctica has now been foreclosed, the jurisdictional form that remains is part of the enabling legal infrastructure that patterns contemporary global extraction. Specifically, this jurisdictional form entails the reassertion of international legal authority grounded in colonial territorial claims, and a reappropriation of the Common Heritage of Mankind principle (CHM) to appeal to a construction of universality that repeats the familiar colonial move of locating 'humanity' largely in the Global North.[5] In the contested times of the Anthropocene,[6] discussion of the ATS rightly celebrates an instance of restraining corporate extraction of hydrocarbons from an unstable climactic ecosystem.[7] However, we could also take account of how the ATS' jurisdictional form could contribute to contemporary global extraction and its highly unequal consequences.

The article proceeds in the following steps. Section II outlines the conversation about extraction in global space and international legal authority that this article joins. Section III describes the specific debates about the ATS that this article analyses. Section IV sets out this article's analysis of the debates described in Section III. Section IV has two parts. Section IV(a) describes how resource extraction figured in these debates and argues that for signatory states, legal or jurisdictional form was also an important part of what was at stake in the question of debating the ATS and its place in the international legal order. Section IV(b) outlines in more detail the components of the jurisdictional form I am describing, specifically how in these debates colonial territorial claims were reasserted and how CHM was contested and reappropriated. Section V considers the implications of taking the ATS' jurisdictional form seriously. It provides an account of how this analysis could prompt us to think about more fully contesting the enabling legal infrastructure that patterns contemporary global extraction and its highly unequal consequences.

II. International legal authority and extraction in global space

Scholars have built a rich conversation examining the dynamics of extraction in global space and their relationship to practices of authorisation in international law.[8] This

[2]Protocol on Environmental Protection to the Antarctic Treaty (1991), Article 7.
[3]See among others Scott (2020); Scott (2021); Merino (2020); Gudynas (2021).
[4]See Scott (2023).
[5]On this move to universalism, see Pahuja (2011).
[6]See on this concept, among others, Birrell and Dehm (2021); Haraway (2015).
[7]See for example the introductory comments to Triggs and Riddell (2007).
[8]Eg Ranganathan, see n 1; Craven, see n 1; Storr, see n 1; Mickelson see n 1; Feichtner, see n 1; Feichtner and Ranganathan, see n 1.

article's somewhat constrained analysis seeks to contribute to this conversation. The method by which I undertake my enquiry can be summarised by Pahuja and Storr in the following paragraph on what they have called 'historically inflected jurisprudence':

> Historically inflected jurisprudence invites us to pay attention to the way in which law and jurisprudence has been written over time. It does not start with a single definition of law and work backwards to trace its histories. Instead our lens orients us toward seeing and describing practices which both authorize conduct, and which claim authority to speak the law, as well as the historical (and political-economic) contexts in which those practices take place. Such an approach enables us to recover the different ways in which the role of international law in the global order has been and may be understood by different people and at different times. It also enables us to see the historical struggles that lie beneath seemingly stable doctrines, rules and forms, what is required to 'stabilize' those formations in an ongoing way, and what might be at stake in that stabilization.[9]

Such an attention to practices of stabilisation and authorisation, or contested claims to 'speak the law', helps to understand the way extraction in global space was debated in the CRAMRA negotiations. Broadly speaking, the discussion of extractive dynamics and imaginaries in global space has to a large extent intersected with work on the 'commons' or on CHM specifically. The concept of CHM has been attributed to Maltese Ambassador Arvid Pardo who proposed a new regime to prevent powerful states from monopolising deep sea resources in a 1967 speech to the General Assembly.[10] Discourses of CHM are often used in contested ways, and have a complicated relationship with extraction and the international order.[11] With potential to resist the familiar distributive effects of powerful states monopolising resource profits,[12] they can also be complicit in regimes of colonialist capital accumulation.[13] Feichtner and Ranganathan have highlighted these tensions when they show how,

> in search of alternative political economies—less exploitative, less ecologically destructive—scholars and activists have turned to the commons and to commoning in recent years … Yet current initiatives that seek to harness the economic potential … as a solution to conflict and environmental destruction stand in stark contrast with visions of a commons economy built on solidarity.[14]

Ranganathan has also analysed how conflict over oceanic resources was expressed through discourses of CHM, with varying interpretations between a 'weak institution … guided by commercial principles,' and a 'strong international authority, in whose decision making they [nation-states from the Global South who were invoking the concept] could effectively participate'.[15] There is a longer story that could be told about strategic advocacy around CHM, its use in international legal debates as well as about its complex relationship to extraction and redistribution.[16] For this article, the most relevant aspect is how states parties' use of CHM in the debates I will now outline points to the close links between challenging the distribution of mining profits, the influence over extractive activities, and the ATS' allocation of jurisdictional authority.

[9]Pahuja and Storr (2017), p. 54. Internal citations omitted.
[10]Ranganathan, see n 1; Mickelson, see n 1.
[11]Storr, see n 1; Ranganathan, see n 1.
[12]Ranganathan, see n 1; Mickelson, see n 1, p. 635, 637; 640.
[13]See Ranganathan (2018); Craven, see n 1; Pahuja (2012).
[14]Feichtner and Ranganathan, see n 1, p. 541.
[15]Surabhi Ranganathan, see n 13, p. 278.
[16]Storr, see n 1; Ranganathan (2019b).

III. Debating the ATS

As background, the Antarctic Treaty was signed by 12 states at the height of the Cold War, in 1959 in Washington.[17] Scholars have shown that a key strategic objective in formulating the ATS was preventing UN oversight or international administration of Antarctica.[18] In its early stages, the Treaty contained few provisions. It banned military and nuclear activity. It set aside fiercely contested claims of territorial sovereignty over areas of the continent, but implicitly preserved these not resolving them.[19] The Treaty has changed somewhat over the last half a century. More states have acceded to the Treaty by demonstrating sufficient interest in Antarctica,[20] and additional conservation protocols now form part of the Treaty System.[21] In the 1980s, state parties negotiated and drafted the since-abandoned CRAMRA text in order to facilitate and regulate mining in Antarctica.[22] The question of mining Antarctica resources was entwined with a longer contestation over whether the ATS was the preferable way to give legal form to authority over Antarctica, or whether a UN supervision body would better reflect an appropriate degree of internationalism. States did not reach an agreement on this mining and extractive activities protocol, and it never came into effect.[23] Instead, state parties signed the Protocol on Environmental Protection in Madrid in 1991, which bans mining.[24]

The debates that this article analyses take place over the years of 1983 and 1984. Malaysia and Antigua and Barbuda led debates at the General Assembly which combined two concerns. These were firstly the more recent attention to regulating mineral extraction in Antarctica, and secondly an older question of Antarctic governance beyond the terms of the ATS that had been raised on a number of occasions by states from the Global South. Over 100 states submitted divergent written comments on a range of subjects. Here, I refer to particular illustrative instances from these submissions to draw out one point in particular. That is, how a number of states challenged the ATS' allocation access to Antarctic resources, how the ATS was formed and what this meant for its relationship to the then contemporary international legal order.[25] Certainly, states make public challenges for a range of reasons and also regularly make problematic

[17]The initial signatories were Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, the United States, the United Kingdom, the Soviet Union and South Africa. See *Antarctic Treaty* (1961).

[18]See on the political settlement of the ATS following India's challenge to a closed treaty system in favour of UN administration Storr (2020a). See also Antonello (2019), p. 3.

[19]*Antarctic Treaty*, see n 17, Art 1, IV and V. Claims of sovereignty to Antarctic had been made by the United Kingdom, Australia, New Zealand, Norway, Chile, Argentina and France from the early 20th Century onwards on the stated grounds of exploration and discovery. The United States and the Soviet Union did not actively claim sovereignty at the time the Treaty came into effect but did not recognise existing claims and continue to reserve the right to make them. Antonello, see n 18, p. 8–9.

[20]This is usually demonstrated by a costly scientific program. See for a list of signatory and acceding states as of 1990, the appendix of Rothwell, (1990), p. 290.

[21]For example, on marine life. See Antonello, see n 18, p. 4–7.

[22]Antonello, see n 18, p. 78–81.

[23]There is a longer story about the background to these negotiations. See Storr, n 1.

[24]See Protocol on Environmental Protection to the Antarctic Treaty (1991), Article 7. See further on this protocol Bastmeijer (2018), p. 230. Except if the Treaty itself were renegotiated, for instance on its potential expiry or review in 2048. See Rothwell and Hemmings (2018), p. 5. See also Klaus Dodds, 'In 30 years the Antarctic Treaty becomes modifiable, and the fate of a continent could hang in the balance', *The Conversation*, July 12, 2018, http://theconversation.com/in-30-years-the-antarctic-treaty-becomes-modifiable-and-the-fate-of-a-continent-could-hang-in-the-balance-98654.

[25]See resolution adopted at the 38th Session of the General Assembly, UNGA (1983). I take up a conception of the South as fluid, rather than a strict binary with the North. See Eslava (2019). A number of Latin American states supported maintaining the Treaty System, through divergent discourses, and India and Brazil had recently acceded as Consultative Parties.

defences of their own interests.[26] I therefore pay attention to this particular publicly-articulated struggle over determining the jurisdiction of regulating mining in Antarctica in order to think through what else might be carried in the treaty regime's legal form,[27] perhaps less noticeably than in its principal provisions. Looking more closely at the details of this challenge to how the ATS was formed, Pakistan, for instance, advocated that its allocation of Antarctic resources be redistributed. That is, where 'every State should have a fair share of the living and mineral resources of Antarctica'.[28] Pakistan further argued for public access to scientific knowledge about Antarctica, that 'the results of … [scientific research] activities should be used for the benefit of all'.[29] Ghana called for 'bringing Antarctica eventually into a more open and accessible régime which would make it part of the common heritage of mankind and not, as at present, the exclusive preserve of a limited number of countries.'[30] Faced with a challenge to the ATS, signatory states forcefully negated CHM's application in two ways. It is the quality of this negation that proves most instructive to this article's analysis of the ATS' legal form. That is, what states struggled over when debating the jurisdictional arrangement of regulating extraction in Antarctica. This negation entailed firstly an argument by signatory states that CHM could not apply to Antarctica, because it was their territory. Secondly signatory states also asserted that redistribution of Antarctic governance was unnecessary because they – through the ATS – already took care of matters of common interest on behalf of the rest of the world, with many of the neo-colonial rhetorical and material implications that this entailed. The next section examines this response to the challenge posed to the ATS by CHM. The section outlines what I am calling the legal or jurisdictional form that signatory state parties were anxious to maintain in force through defending the ATS, perhaps even more so than their access to any future mineral resources.

IV. The stakes of jurisdictional form

One way to think about extraction is as an activity of taking minerals or hydrocarbons from the earth or waters. But as those working in traditions of scholarship on extractivism have shown us, extractive dynamics affect more than the extractive project itself – they shape social and lawful relationships and distribute harm and profit.[31] What characterises the relationships and the legal order produced through extractivism is a highly unequal scale of capital accumulation far from the extractive activity. Moreover, associated harms are concentrated with communities close to the site of extraction, replicating and reproducing racialised and neo-colonial forms of resource movement and governance.[32] Martín writes that extractivism can therefore be understood as 'an expression of political dominance'.[33]

[26]See on the relationship between the state and international law and the ambivalences of its form Eslava and Pahuja (2020); Eslava, Murphy and Pahuja (forthcoming); Thornton (2022).
[27]See on forms of international law through public debate and 'juridical theatre' Peevers (2019).
[28]The submission of Pakistan (view of states, submission 33) in UNGA, see n 25, p. 33, para 5(e).
[29]The submission of Pakistan (view of states, submission 33) in UNGA, see n 25, p. 33, para 5(c). See also for a reflection of this debate in the international legal literature, in support for the concept Yale Note (1978), and a denial of the applicability of the concept Rich (1982).
[30]The submission of Ghana (view of states, submission 18) in UNGA, see n 25, p. 83, para 1.
[31]See Scott (2021); Merino, (2020); Scott (2020).
[32]See Martín (2017); Achiume (2019).
[33]Martín, see n 32, p. 29. Achiume's report further highlights the violence of global forms of extractivism including racialised labour exploitation and continuing patterns of power distribution. Achiume, see n 32, p. 6–7.

Indeed for Scott, if 'we focus only on "literal" sites of extraction, those of mining or fossil fuel projects, we tend to forget about the larger political economy that is driving the extractive logic'.[34] This article examines an adjacent driver of extractive logics in practices of international legal authorisation. That is, we can look beyond physical sites of extractive projects to understand how different elements of relationships of extractivism take shape, including looking to Antarctica.[35] As I pointed to earlier, this article builds the argument that while extracting mineral resources from Antarctica has been foreclosed, the jurisdictional form that remains is part of the enabling legal infrastructure that patterns contemporary global extraction. In this section we can see this in two steps. Firstly, signatory states themselves did not utilise a narrow definition of resources in the way that they made submissions in these debates about what was at stake in maintaining the ATS' jurisdiction. For signatory states, legal form was also an important part of what was at stake in the contested question of the ATS its place in the international legal order. Secondly, the operation of the ATS' jurisdictional form becomes clearer when we examine its parts directly. In my account, the ATS' jurisdictional form comprises the reassertion of forms of international legal authority grounded in colonial territorial claims, and a reappropriation of the CHM to appeal to a form of universality that repeats the familiar colonial move of locating 'humanity' largely in the Global North.[36]

a. Resources in their multiple forms

While extraction typically involves resources such as minerals, oil and gas, Martín shows how there is nothing necessarily natural about the kind of resources generally associated with extractive projects. He highlights that '"natural resources" such as minerals are produced and reproduced through a political process. In other words, they become "resources" through political relations, operations and space production'.[37] This analysis is consistent with the way signatory states made submissions that characterised Antarctica as a multifaceted resource.[38] For instance, according to Australian submissions, 'resources may also include areas, species, biological communities or systems that are considered important to maintain, protect or conserve in as unaltered a state as possible to provide points of reference or natural buffers against activities undertaken elsewhere'.[39] Indeed, Australian claims to base their authority over Antarctica on the practices of the nineteenth century British sealing industry generated further claims to Antarctic resources.[40] This included the state's 'substantial interest in ensuring that any exploitation of these resources by others is regulated … [to] not threaten either the balance of the ecosystem or the maintenance of the resources for future utilization'.[41] Particularly, Australia proposed future rights to towing icebergs out of Antarctica in

[34]Scott, see n 4, 6.
[35]Scott, see n 4.
[36]Pahuja, see n 5.
[37]Martín, see n 32, p. 31.
[38]See eg submission of Australia (views of states, submission 3) in UNGA, see n 25, p. 54, para 147.
[39]Submission of Australia (views of states, submission 3) in UNGA, see n 25, p. 54, para 146.
[40]See submission of Australia (views of states, submission 3) in UNGA, see n 25, p. 28, para 6. On these sealing practices as a 'catastrophic over-exploitation' see Antonello, n 18, p. 51. Stewart Motha's work on archiving as simultaneously authorising and hiding certain forms of violence through law is productive in reading how this narrated temporality asserts the legitimacy of the distribution of authority in Antarctica. See Motha (2018).
[41]Submission of Australia (views of states, submission 3) in UNGA, see n 25, p. 79, para 266.

order to use glacial ice for fresh water and to generate energy when current water and energy sources become more scarce.[42] Australia linked these projects with weighing up contemporary prospecting for Antarctic minerals.[43] Indeed, signatory states spoke about resources in and beyond Antarctica as if both were part of the same negotiation process. For instance, Australia posited that manganese nodules are 'are most likely to be exploited first in tropical waters where they are richer and geographically more accessible'.[44] State representatives further qualified this statement, adding that 'the availability of lower cost alternative sources suggest that exploitation of Antarctic minerals is unlikely to be technically feasible or economically rational until the next century'.[45] This quote signals to the way that signatory states asserted authority to decide about extracting resources not just from Antarctica, but globally. As Mitchell explains, 'what appears as nature is already shaped by forms of power, technology, expertise, and privilege'.[46] Despite the ostensibly technical presentation of the above arguments, the way that signatory states denoted resources as 'likely' to be extracted or 'accessible' for extraction assumed both access to and control over these resources, wherever they were.

There have since been doctrinal changes that mean mineral resources can no longer be extracted from Antarctica. Yet the jurisdictional form that remains may still contribute to patterning contemporary global extraction.[47] For instance, the legal regime that the mining ban entered had already considered Antarctica as a potential 'buffer zone' that could contribute to legitimising extraction elsewhere. As we just saw, this legal regime had already negotiated how the maintenance of sovereign territorial claims could be linked to the ability to negate global redistribution. More fully understanding the claims to authority in these debates and their relationship to reinforcing patterns of harm and profit from extraction can be obscured by examining them as only impacting Antarctic territory. Changing the direction of our attention shows not only how Antarctica receives and exposes the impacts of global extractive activity and the fossil fuel economy, but also that the legal form of the ATS does not confront the underlying sustaining dynamic of the global production of extractive activity. It may even produce a jurisdiction with a close relationship with an extractive international legal order.

b. Territorial claims and reappropriations of CHM

This section focuses on two aspects of the specific legal and jurisdictional form that signatory states defended in these debates, starting with territorial claims. The UK proclaimed that it was 'the first [state] to undertake the regulation of Antarctic activity by means of the application of territorial sovereign rights'.[48] According to the UK, it was also 'the first State to become involved in Antarctica with the voyage of Captain Cook in 1772–1775'.[49] While Argentina asserted that 'Antarctic history began when

[42]Submission of Australia (views of states, submission 3) in UNGA, see n 25, p. 63, para 199.
[43]Submission of Australia (views of states, submission 3) in UNGA, see n 25, p. 79, para 266.
[44]Submission of Australia (views of states, submission 3) in UNGA, see n 25, p. 55 at para 151.
[45]Submission of Australia (views of states, submission 3) in UNGA, see n 25, p. 81 at para 275.
[46]Mitchell (2002), p. 170.
[47]See further on the interaction between historical and contemporary political struggles over Antarctica the contributions in Dodds, Hemmings and Roberts (2017).
[48]Submission of the United Kingdom (views of states, submission 49) in UNGA, see n 25, p. 97, para 3.
[49]Submission of the United Kingdom (views of states, submission 49) in UNGA, see n 25, p. 97, para 3.

Christopher Columbus landed in America and the Spanish tried to find the south-west passage',[50] the former Soviet Union also claimed to be the first state to discover the territory.[51] The US also declared that it 'pioneered the "technological age" of Antarctic exploration … and staked claim to large areas on behalf of the United States'.[52] Unsurprisingly, these performances of colonial acquisition were contested. Pakistan disputed this basis for sovereignty, stating that 'the colonial premise on which these claims were based has been rejected'.[53] The Philippines also called for a new agreement over the continent 'which will not recognise territorial claims that are substantiated by mere historical episodes'.[54] As we can see so far, challenging the ATS formed part of challenges to the international order more broadly, including disputing claims that 'discovery' could give rise to international authority,[55] and what the application of CHM might look like for global redistribution.[56] State parties to the ATS also mobilised their territorial declarations towards negating redistribution; and in particular to negate the application of CHM.

Indeed, we can see in these debates competing ideas about what CHM and the idea of international space substantively meant. State parties' particularly strident negation of redistribution is instructive. It reveals something of the way these signatory states reinforced their own territorial claims, as well as Northern access to resources and control of global extractive processes. For instance, Australia declared that 'Antarctica is not beyond national jurisdiction'.[57] Argentina also maintained that 'there is no legal vacuum. Nor is Antarctica a *res nullius*'.[58] Australia asserted that 'unlike outer space and unlike the deep seabed, where attempts are being made to apply new arrangements and concepts, Antarctica has been the subject of exploration settlement and claims to sovereignty by a number of countries over many years'.[59] State parties to the ATS also drew on previous public discourse, a member of adjacent institution the US Ocean Mining Administration had spoken to the media five years earlier to say 'Antarctica is not a no-man's-land … the political difference between the deep seabed and Antarctica and between the moon and Antarctica is stated quite simply—territorial sovereignty'.[60]

The second aspect of jurisdictional form that signatory states defended was a reappropriation of the discourse of CHM. At the same time as negating the application of the CHM due to territorial claims, Australia posits the ATS as sufficiently addressing the

[50]Submission of Argentina (views of states, submission 2) in UNGA, see n 25, p. 6, para 6.
[51]Submission of the Union of Soviet Socialist Republics (views of states, submission 48) in UNGA, see n 25, p. 82, para 6.
[52]It did so through asserting a more privatised form of territoriality, writing that 'New England sailors were prominent in the first big wave of exploration of Antarctica, when seal hunters flocked to Antarctic waters in the 1820s. Little is known of their no doubt extensive reconnaissance of the Antarctic Peninsula area, since the sealers guarded their cruise logs and landfalls as proprietary secrets'. See submission of the United States of America (views of states, submission 50) in UNGA, see n 25, p. 100, para 1.
[53]The submission of Pakistan (view of states, submission 33) in UNGA, see n 25, p. 32, para 1.
[54]Despite many state parties to these debates relying on such claims for their own statehood. The submission of Philippines (view of states, submission 35) in UNGA, see n 25, p. 39, para 3.
[55]See on this long history Anghie (2005); Tzouvala (2020).
[56]Storr, see n 1; Ranganathan, see n 1.
[57]Mr. Woolcott, representative for Australia, in UNGA, 1983, 38th Sess, 1st Cttee 45th Mtg (30 November 1983, New York), UN Doc A/C.I/38/PV.45, p. 16.
[58]Mr. Beauge, representative for Argentina, in UNGA, 1983, 38th Sess, 1st Cttee 46th Mtg (30 November 1983, New York), UN Doc A/C.I/38/PV.46, p. 4.
[59]UNGA, 38th Sess, 3rd Plen Mtg, 23 September 1983, New York, UN DOC A/38/PV.3, p. 22, para 209.
[60]Mr. L Ratiner, representative of the United States, cited in UNGA, 39th Sess. UN Doc A/39/583, Study requested under General Assembly resolution 38/77. Part I, (31 October 1984), New York, p. 65, para 282.

principle, stating that it already 'establishes Antarctica as a region of unparalleled international co-operation in the interests of all mankind'.[61] This claim was also contested throughout the debates. For instance, Sri Lanka argued that 'claims to serve the interest of all mankind necessitate further study of this matter within the international community'.[62] Malaysia also highlighted,

> the assertion that the Treaty parties, in their current negotiations on a minerals regime, act as trustees for mankind … does not carry sufficient conviction … trustees cannot be self-appointed, and they should not have a material interest in the trust property.[63]

Storr has analysed the legal form and its consequences carried by the way CHM drew from earlier concepts of trusteeship.[64] This work shows how the colonial inheritance of the trusteeship form endures into later permeations of international administration, as well as an inscription of the centrality of propertied relationships to nature.[65] And as we can see here, the effects of signatory states' move to negate the principle's application also purports to have already incorporated its redistributive meaning. Examining this appropriation of the language of CHM can show, I suggest, how certain signatory states reaffirmed a particular claim to jurisdiction through locating 'common' decision-making squarely within their authority.

As we saw in the previous section, signatory states framed the authority to decide on the location of extractive projects as a question of where makes most geographical sense, but left questions of whose territory it is and who will profit comfortably out of view. Relatedly signatory states appropriated discourses of CHM to position themselves as the location of common humanity. Positioning resources as 'commonly' accessible within a singular viewpoint worked to position them as in the control of signatory states. Indeed, Craven showed in his adjacent examination of international laws regulating extraction and military activities in outer space that the 'outward projection of a set of rationalities'[66] allowed state actors to 'imagine the globe and situate themselves at its centre'.[67] Gevers' concept of 'imaginative geography' that describes projects of global ordering also aptly explains how signatory states envisioned ways in which the location of extraction could be offset or provided with a buffer zone or 'counter-balance', without changing the structures of authority that have facilitated these patterns to begin with.[68]

Signatory states' re-entrenchment of colonial territorial claims and appropriation of the language of CHM combined to produce forms of legal imagination and argument. This legal form avoided a successful challenge to the jurisdiction of the ATS' and, I suggest, reinforced a mode of authorisation in international law entangled with practices of appropriation not contained to the Antarctic continent. Indeed, state parties debating the ATS did not see this is as only a contest over the possibilities for localised mining, but rather as in some way exemplary of the development of the international legal order. The

[61]UNGA, see n 25, p. 85, para 290(b).
[62]Mr. Dhanapala, representative for Sri Lanka, in UNGA, see n 25, (UN Doc A/C.1/39/PV.50), p. 42.
[63]Mr. Zain, representative for Malaysia, in UNGA, see n 25, (UN Doc A/C.1/39/PV.50), 12. For a detailed examination of imperialism and trusteeship see Storr (2020b).
[64]Storr (2020a).
[65]Storr (2020a).
[66]Craven, see n 1, p. 571.
[67]Craven, see n 1, p. 571.
[68]Gevers (2019), p. 492.

next section outlines how we could take account of these parts of a legal infrastructure that might be connected to undergirding structure of the ATS' authority.

V. Extraction and jurisdiction

Contemporary representations of Antarctica commonly invoke a pristine, enclosed environment: a remote and icy space that is not completely solid land.[69] This is often contrasted with the chaotic proliferation of global extractive activity. For indeed, the international laws of the ATS are also said to be 'imbued with the romantic environmentalism of wilderness'.[70] As we have seen so far, it is true that mining is banned in Antarctica. This has had a real impact in preventing extraction on the Antarctic continent. In the context of warming Antarctic ice and climate change's deeply unequal effects, this is highly and increasingly significant.[71] Yet international legal representations of the ATS can at times present it in a more categorical way as what we might call an 'anti-extractive' legal instrument.[72] The implication being that, as a form of law, it fundamentally rejects the intensification of extracting resources wherever this occurs, as well as the ecological and social consequences that flow from such forms of extraction. This article has offered a redescription of the ATS that joins a body of scholarship exploring how questions of resource extraction – in Antarctica, as elsewhere – are not separate from the worlds made by a particular form of international jurisdictional authority.[73] My argument is that despite an important mining ban and the important social mobilisations that led to it,[74] the ATS carries a legal form that is entangled with more global dynamics of contemporary extraction and their highly unequal consequences.

That is, part of what was at stake in a series of historical contestations over whether the ATS should continue to govern Antarctica was the relationship between a localised hypothetical set of mining regulations, and – crucially – who was able to claim authority over extractive projects and activities in international space. When these hypothetical regulations became superseded by a mining ban, the localised consequences were clear: mining is prohibited on the Antarctic continent. However, the consequences for that closely related and highly contested question of who was able to claim authority over extractive projects and activities in international space – and what counts as international space – took a different form. Through this article, I have sought to sketch some of the contours of how this question of authority over extraction unfolded. One important element of my account is that disputes over whether Antarctica was international space and what was the relationship between the ATS and the international order carried different formulations of international authority, and of authority over resource extraction.

[69]See on the construction of Antarctic ice as 'not-quite-land' Barr (2016), p. 197.
[70]Stephens (2018), p. 34.
[71]See on the impacts of Antarctic ice melt Damian Carrington, ''Extreme situation': Antarctic sea ice hits record low', *The Guardian*, 16 February 2023, https://www.theguardian.com/world/2023/feb/15/antarctic-sea-ice-hits-record-low-climate-crisis. See on these unequal maldistributions, Natarajan and Khoday (2014), p. 580.
[72]See Triggs and Riddell, n 7.
[73]On the method of critical redescription see Pahuja (2013). See on the relationship between resource extraction and jurisdictional authority Storr (forthcoming); Craven, see n 1; Ranganathan (2019a), p. 577; 582–3, 589. See on world-making and jurisdiction Craven, Pahuja and Simpson (2019).
[74]See broadly Storr (forthcoming).

To illustrate this argument, I have paid attention above to how territorial claims were mobilised by state actors through these debates: that is, to push back against proposals to apply the principle of CHM to Antarctica, to reinforce the ATS' more narrow allocation of jurisdictional authority,[75] as well as to re-enact a familiar colonial move to locate 'humanity's' decision making in the Global North. As much as a conflict over what would happen with hydrocarbon extraction in Antarctica, I suggest that these debates were a conflict over the stakes of jurisdiction, particular legal form or regime. That is, how the ATS related to the international legal order and to the authority enabled through it. This conflict included contests over how the harms and profits of global extractive industry were to be distributed, and what was at stake in deciding these questions through the ATS or beyond it. My enquiry focused on a point in this regime's development, in the 1980s, when regulation of extraction in Antarctica was openly debated. In doing so, neither form of administration, elite state representative or project, nor consequent outcome needs to be idealised for its formulation of jurisdiction or for its relationship with extraction. Rather, I stayed with what characterisations of the ATS through public performance could reveal in terms of how jurisdiction and extraction may be entangled. In other words, how, in response to being challenged, signatory states to the ATS upheld the Treaty's authority not just through a defence of their sovereign territorial claims, but through a double move that negated redistribution because the purposes of CHM were purportedly already achieved. We can see from this that signatory states draw jurisdictional – if not immediately mineralogical – resources from Antarctica in a way that has close parallels to the jurisdictional form needed to enact assertions of authority and extractive projects elsewhere.

If we think of the jurisdictional force of the ATS as spatially confined to the Antarctic continent, then its relationship with extraction would indeed be fully regulated by the mining ban. But as my redescription has sought to show, the jurisdictional authority of the ATS that gave rise to heated debates reveals deep links between maintaining this jurisdictional arrangement and the international order more broadly, as well as to questions of redistribution, colonial inheritances and authority. Signatory states' defence of the ATS did not reject an extractive international legal order. It may well have contributed to re-enacting such an international order through state actors' constitution of the location of authority over global resources.[76] As Craven, Pahuja and Simpson highlight, the practices and narratives of international law are often 'authoring and organising global life … controlling access to resources [and] privileging and distributing authority'.[77] The dynamics of the specific jurisdictional form or 'mode of authorisation'[78] that I examined here reveal that the constitutive work of the ATS might continue to be broader than the doctrinal outcome of highly contested regulation of mining in Antarctica, and indeed than governance of Antarctica itself. On one level, the overt questions that were being debated appear to have been resolved. Mining is banned in Antarctica, the ATS has not since been challenged, and many more states have now acceded to it. But what I

[75]See Storr, n 1.
[76]See on the enactment of authority through jurisdiction Dorsett and McVeigh (2012); Barr (2013), p. 92; Pasternak (2014).
[77]Craven, Pahuja and Simpson, see n 73, p. 23. Buchanan also engages international law not as a regime but 'an array of contexts, techniques and projects deeply entangled with practices of 'world-making.'' Buchanan (2019), p. 560–1. Internal citation omitted.
[78]Barr, see n 69, p. 80.

have aimed to show in this article is that the form of jurisdictional authority reaffirmed through maintaining the structure of the ATS has worldmaking effects beyond Antarctica, and these may continue to shape patterns of global extraction. Put more simply, my argument is that forms matter,[79] in this case jurisdictionally beyond what is often thought of as the spatial operation of the ATS. The form of international jurisdictional authority debated and ultimately retained can be understood as entangled with forms of law that enable increasing extraction in the contemporary moment. That is, a legal form that used sovereign territorial claims to negate redistribution, and constructed Antarctica as a buffer zone or counterbalance that did not ultimately challenge the substrate of extractive dynamics. As I have suggested so far, one way to understand the form of the ATS is through analysing how it was described in response to being challenged. While not negating the significance of existing prohibitions on corporate activity in Antarctica, more fundamental reorderings of international legal authority may be required – as well as possible – in order to substantially break from the contemporary patterns of global extraction. This exercise can gesture towards a growing repertoire of ways that international lawyers can think carefully about how to recognise and resist reproducing practices of extraction that form part of our contemporary international legal order.[80]

VI. Conclusion

In this article, I was interested in joining a conversation on the dynamics of extraction in global space and their relationship to practices of authorisation in international law. Specifically, through an analysis of a historical debate that occurred through the negotiation of the since-abandoned CRAMRA over whether the ATS should continue to govern Antarctica. My analysis sought to understand the relationship between this once-potential, localised set of mining regulations and more ongoing contestations about claiming authority over extractive projects and activities in international space. While there have since been doctrinal changes that mean mineral resources can no longer be extracted from Antarctica, scholars of extractivism show us that we can look to understand a broader relation of accumulation and dispossession. This article therefore argued that while extracting mineral resources from Antarctica has been foreclosed, the jurisdictional form that remains is part of the enabling legal infrastructure that patterns contemporary global extraction. Specifically, this jurisdictional form entails the reassertion of international legal authority grounded in colonial territorial claims, and a reappropriation of CHM to appeal to a construction of universality that repeated the familiar colonial move of locating 'humanity' largely in the Global North. In the contested times of the Anthropocene, discussion of the ATS has rightly celebrated an instance of restraining corporate extraction of hydrocarbons from an unstable climactic ecosystem. However, we could also take account of how the ATS' jurisdictional form could contribute to contemporary global extraction and its highly unequal consequences.

[79]See broadly Levine (2015).
[80]See among many others Natarajan and Dehm (2022); Birrell and Matthews (2020); Mason-Case and Dehm (2021); Merino, see n 3; Scott, see n 3; Pasternak et al. (2023).

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