

**Final Report of the Twenty-Eighth  
Antarctic Treaty Consultative Meeting**



ANTARCTIC TREATY  
CONSULTATIVE MEETING

**Final Report  
of the Twenty-Eighth  
Meeting**

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Stockholm, Sweden, 6 – 17 June 2005

Antarctic Treaty Consultative Meeting (28<sup>th</sup>:2005:Stockholm)

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## ACRONYMS AND ABBREVIATIONS

<b>ACAP</b>	Agreement on the Conservation of Albatrosses and Petrels
<b>ASOC</b>	Antarctic and Southern Ocean Coalition
<b>ASMA</b>	Antarctic Specially Managed Area
<b>ASPA</b>	Antarctic Specially Protected Area
<b>ATS</b>	Antarctic Treaty System; Antarctic Treaty Secretariat
<b>ATCM</b>	Antarctic Treaty Consultative Meeting
<b>ATCP</b>	Antarctic Treaty Consultative Party
<b>CCAMLR</b>	Convention for the Conservation of Antarctic Marine Living Resources
<b>CCAS</b>	Convention for the Conservation of Antarctic Seals
<b>CEE</b>	Comprehensive Environmental Evaluation
<b>CEP</b>	Committee for Environmental Protection
<b>COMNAP</b>	Council of Managers of National Antarctic Programmes
<b>EIA</b>	Environmental Impact Assessment
<b>HCA</b>	Hydrographic Committee on Antarctica
<b>HSM</b>	Historic Site and Monument
<b>IAATO</b>	International Association of Antarctica Tour Operators
<b>ICG</b>	Intersessional Contact Group
<b>ICSU</b>	International Council for Science
<b>IEE</b>	Initial Environmental Evaluation
<b>IHO</b>	International Hydrographic Organization
<b>IMO</b>	International Maritime Organization
<b>IOC</b>	Intergovernmental Oceanographic Commission
<b>IP</b>	Information Paper
<b>IPY</b>	International Polar Year
<b>IPO</b>	IPY Program Office
<b>IUCN</b>	International Union for Conservation of Nature and Natural Resources – The World Conservation Union
<b>SATCM</b>	Special Antarctic Treaty Consultative Meeting
<b>SCAR</b>	Scientific Committee on Antarctic Research
<b>SDR</b>	Special Drawing Right
<b>SPA</b>	Specially Protected Area
<b>SSSI</b>	Site of Special Scientific Interest
<b>UNEP</b>	United Nations Environment Programme
<b>WG</b>	Working Group
<b>WMO</b>	World Meteorological Organization
<b>WP</b>	Working Paper
<b>WTO</b>	World Tourism Organization
<b>WWF</b>	Worldwide Fund for Nature



**PART I**

**FINAL REPORT**



# **Final Report of the Twenty-Eighth Antarctic Treaty Consultative Meeting**

**Stockholm, Sweden, 6 – 17 June 2005**

- (1) Pursuant to Article IX of the Antarctic Treaty, Representatives of the Consultative Parties (Argentina, Australia, Belgium, Brazil, Bulgaria, Chile, China, Ecuador, Finland, France, Germany, India, Italy, Japan, the Republic of Korea, the Netherlands, New Zealand, Norway, Peru, Poland, the Russian Federation, South Africa, Spain, Sweden, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Uruguay) met in Stockholm from 6 to 17 June 2005, for the purpose of exchanging information, holding consultations, and considering and recommending to their governments measures in furtherance of the principles and objectives of the Treaty.
- (2) The Meeting was also attended by Delegations of the following Contracting Parties to the Antarctic Treaty which are not Consultative Parties: Canada, the Czech Republic, Denmark, Estonia, Greece, Hungary, Romania, Slovakia, and Switzerland. A delegation from Malaysia was present by invitation of the XXVII ATCM to observe the Meeting.
- (3) In accordance with Rules 2 and 31 of the Rules of Procedure, Observers from the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Scientific Committee on Antarctic Research (SCAR), and the Council of Managers of National Antarctic Programs (COMNAP) attended the Meeting.
- (4) In accordance with Rule 39 of the Rules of Procedure, Experts from the following International Organizations and Non-Governmental Organizations were invited to attend the Meeting: the Antarctic and Southern Ocean Coalition (ASOC), the International Association of Antarctica Tour Operators (IAATO), the International Hydrographic Organization (IHO) the International Maritime Organization (IMO), the Intergovernmental Oceanographic Commission (IOC), the World Conservation Union (IUCN), the World Tourism Organization (WTO), the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP).
- (5) The information requirements of the host country towards the Contracting Parties, Observers and Experts were fulfilled by Secretariat Circular Notes, letters and through a website with an open as well as a password protected area.

### **Item 1: Opening of the Meeting**

- (6) In accordance with Rules 5 and 6 of the Rules of Procedure, Ambassador Greger Widgren, Head of the Swedish Delegation, opened the Meeting and proposed Ambassador Hans Corell as Chair of the ATCM. The proposal was accepted. The Chair made an opening statement in which he stressed the Antarctic spirit, a spirit of cooperation and persistence that developed during the first era of Antarctic explorations. As highest priorities for the XXVIII ATCM Ambassador Corell mentioned the conclusion of the negotiations on the Liability Annex to the Environment Protocol and the issues of tourism and bio-prospecting.
- (7) The Consultative Meeting was inaugurated by the Swedish Minister of Foreign Affairs, Ms. Laila Freivalds. In her address the Minister referred to the long and intense relation of Sweden with Antarctica. Sweden had adhered to the Antarctic Treaty in 1984, and emphasizes international cooperation in its polar research program, which covers both the Arctic and the Antarctic regions. The Minister also stressed the example of Antarctica, the first and only demilitarized continent, for the cause of world peace. She referred to the fact that this was the first ATCM to be prepared by the host government in cooperation with the Antarctic Treaty Secretariat, and expressed the hope that the XXVIII ATCM would be able to adopt the Annex on Liability to the Environment Protocol. The Minister's speech is included in Annex D of this Report.

### **Item 2: Election of Officers and Creation of Working Groups**

- (8) Dr. Mike Richardson, Head of the Delegation of the United Kingdom (host country of the XXIX ATCM) was elected Vice-Chair. Ambassador Folke Löfgren was appointed Secretary General, and Mr. Stig Berglind was appointed Deputy Secretary General of the Meeting. In accordance with Rule 7 of the Rules of Procedure, Mr. Jan Huber, Executive Secretary of the Antarctic Treaty Secretariat, acted as Secretary of the Meeting.
- (9) Four Working Groups were established: (i) a Working Group on Legal and Institutional Affairs, (ii) a Working Group on Operational Matters, (iii) a Working Group on the Liability Annex and (iv) a Working Group on Tourism and Non-Governmental Activities.
- (10) The following Chairs of the Working Groups were elected:
  - i) Legal and Institutional WG: Professor Olav Orheim of Norway
  - ii) Operational Matters WG: Dr. José Retamales of Chile
  - iii) Liability WG: Ambassador Don MacKay of New Zealand
  - iv) Tourism WG: Mr. Michel Trinquier of France

### **Item 3: Adoption of the Agenda and Allocation of Items**

(11) The following Agenda was adopted:

1. Opening of the meeting.
2. Election of Officers and creation of Working Groups.
3. Adoption of the Agenda and allocation of items.
4. Operation of the Antarctic Treaty System: Reports by Parties, Observers and Experts.
5. Operation of the Antarctic Treaty System: General matters.
6. Operation of the Antarctic Treaty System: Review of the Secretariat's situation.
7. Report of the Committee for Environmental Protection.
8. The Question of Liability as referred to in Article 16 of the Protocol.
9. Safety and Operations in Antarctica.
10. Relevance of Developments in the Arctic and in the Antarctic.
11. The International Polar Year 2007/2008.
12. Tourism and Non-Governmental Activities in the Antarctic Treaty Area.
13. Inspections under the Antarctic Treaty/Protocol.
14. Science Issues, particularly scientific co-operation and facilitation.
15. Operational issues.
16. Education issues.
17. Exchange of Information.
18. Biological Prospecting in Antarctica.
19. Preparation of the XXIX Meeting.

(12) The Meeting adopted the following allocation of agenda items:

- Plenary: Items 1, 2, 3, 4, 7 & 19
- Liability Working Group: Item 8
- Legal and Institutional Working Group: Items 5, 6, 17 & 18
- Tourism and Non-Governmental Activities Working Group: Item 12
- Operational Working Group: Items 9, 10, 11, 13, 14, 15, 16

The Meeting also decided to allocate draft instruments arising out of the work of the CEP, the Tourism Working Group and the Operational Working Group to the Legal and Institutional Working group for consideration of their legal and institutional aspects.

### **Item 4: Operation of the Antarctic Treaty System: Reports by Parties, Observers and Experts**

(13) Pursuant to Recommendation XIII-2, the Meeting received reports from:

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- The United States Government as the Depositary of the Antarctic Treaty;
- The Australian Government as the Depositary of the Convention on the Conservation of the Antarctic Marine Living Resources (CCAMLR);
- The Australian Government as the Depositary of the Agreement on the Conservation of Albatrosses and Petrels (ACAP);
- The United Kingdom Government as the Depositary of the Convention for the Conservation of Antarctic Seals (CCAS);
- The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR);
- The Scientific Committee on Antarctic Research (SCAR);
- The Council of Managers of National Antarctic Programs (COMNAP).

These reports are reproduced at Annex F.

- (14) Pursuant to Article III-2 of the Antarctic Treaty, the Meeting also received reports from:
- The Antarctic and Southern Ocean Coalition (ASOC);
  - The World Conservation Union (IUCN);
  - The International Association of Antarctica Tour Operators (IAATO);
  - The International Hydrographical Organization (IHO);

These reports are reproduced at Annex G.

- (15) The United States in its capacity as Depositary reported on the status of the Antarctic Treaty and the Environment Protocol. The Meeting welcomed the news that the Czech Republic deposited its instrument of ratification of the Protocol on Environmental Protection on August 24, 2004. The Depositary drew the attention of the Parties concerned to the fact that a number of persons designated as Arbitrators in accordance with Article 2(1) of the Schedule to the Protocol on Environmental Protection are nearing the end of their term, since they were designated in the year 2000.
- (16) Australia in its capacity as the Depositary for the Convention on the Conservation of the Antarctic Marine Living Resources (CCAMLR) reported that since the 27<sup>th</sup> ATCM, Mauritius has acceded to the Convention.
- (17) In its capacity as the Depositary for the Agreement on the Conservation of Albatrosses and Petrels (ACAP) Australia reported the accession of Peru. Chile informed the Meeting that it had also acceded.
- (18) The United Kingdom, as Depositary of the Convention for the Conservation of Antarctic Seals (CCAS), reported that in recent years no new accessions to the Convention have occurred. The UK reminded the Parties to the Convention that currently not all the required information is being provided. Neither is it being provided on time or with any regularity. The accuracy of the CCAS figures is therefore being compromised.

- (19) The President of SCAR introduced his report, describing the re-organisation of its committees to increase its effectiveness, the five new scientific programmes and its capacity building initiatives.
- (20) Introducing its report, the representative of COMNAP gave a description of how the Council works, mainly through technical groups, to support the cooperation within the framework of the Antarctic Treaty System with practical information exchanged through the national programs.
- (21) In introducing his report as observer to the ATCM, the Executive Secretary of the Commission for the Conservation Antarctic Marine Living Resources (CCAMLR) emphasized the following points:
- the illegal, unreported and unregulated (IUU) fishing of *Dissostichus spp.* (Toothfish) had declined considerably in the past season;
  - the Catch Documentation Scheme for *Dissostichus spp.* had been further developed, as had the centralized vessel monitoring system (c-VMS);
  - an electronic Catch Documentation Scheme (eCDS) was being developed.
- (22) These developments were welcomed by the ATCM. At the same time, one delegation remarked that, although there had been a decline in the IUU fishing of Toothfish, the estimated amount of the IUU catch was still larger than the legal catch, so the Parties and the Commission were not in a position to relax their efforts to fight this practice.
- (23) ASOC introduced IP 108, *Report of the Antarctic and Southern Ocean Coalition (ASOC)*. The ASOC Representative emphasized that although regulation of tourism is now being given serious consideration, significant elements of commercial tourism still await substantive discussion. ASOC attached great importance to the approval of Annex VI on Liability. Likewise, ASOC expressed the wish that the ATCM would consider the questions relating to Lake Vostok, bio-prospecting and the International Polar Year.
- (24) IAATO introduced IP 95 Rev 1, *Report of the International Association of Antarctica Tour Operators 2004-2005*. IAATO remains committed to the safe and responsible management of Antarctic tourism and noted a number of accomplishments during the 2004/05 season. Amongst others, these included the installation of its tourism database, a draft accreditation scheme, the translation of Recommendation XVIII-1 into 9 languages (available on the IAATO web site) and a detailed site-use analysis. IAATO also noted fruitful cooperation with COMNAP, IHO and other organisations.
- (25) In IP 18, *Report by the International Hydrographical Organization (IHO) on "Cooperation in Hydrographic Surveying and Charting of Antarctic Waters"*, the IHO emphasized the progress made in the production of INT charts of Antarctic waters and recommended increased hydrographic surveying activities by the Member

States. The Hydrographic Committee on Antarctica has set up a Hydrographic Survey Programme Working Group to intensify hydrographic survey activity in Antarctica. These activities are carried out in close cooperation with the Consultative Parties, COMNAP and IAATO. Argentina reserved its position on the Antarctic toponyms involved.

- (26) The Meeting acknowledged the progress made in the production of INT Charts and endorsed the recommendations in the IHO Report. The Meeting also expressed its support for the activity of the Hydrographic Committee on Antarctica (HCA) and the work of the Hydrographic Survey Programme Working Group and invited Member States to increase their hydrographic survey activities in Antarctica. Furthermore, the Meeting urged the IHO to consider further its proposal for Maritime Shipping Routes in the Antarctic Peninsula and Ross Sea areas as an IPY initiative. Such a proposal would be important for reducing risks from shipping activities in Antarctic Treaty waters.

## **Item 5: Operation of the Antarctic Treaty System: General matters**

### ***Item 5 (a). Confirmation of the Recognition of Ukraine as a Consultative Party***

- (27) Since the XXVII ATCM, in its recognition of Ukraine as a Consultative Party, had not followed the procedure agreed to earlier, namely by way of a Decision of the ATCM, the Meeting adopted Decision 2 (2005) *Decision confirming the recognition of Ukraine as a Consultative Party*.

### ***Item 5 (b). Intersessional Consultation***

- (28) Japan introduced WP 46 and WP 56 on intersessional consultation procedures, IP 103 on the scope of intersessional consultation and IP 120 with a corrected text of the Rules of Procedure. Japan noted that there was a general consensus at the XXVII ATCM on the need for a procedure by which the Executive Secretary can consult the Consultative Parties if he/she has to take actions for which under Measure 1 (2003) and related instruments he/she needs authorisation from the ATCM and which cannot wait until the next ATCM. The procedure should be:

- Simple, in the sense that the Executive Secretary should be able to contact the Consultative Parties directly;
- Efficient, in the sense that electronic means of communication should be used;
- Accountable to the Consultative Parties (the Executive Secretary should report to the ATCM all cases of intersessional consultation);
- Restricted (the procedure should be used only for those issues for which consultation or authorisation is legally required and which cannot wait until the next ATCM); and
- Based on a consensus of all Consultative Parties.

- (29) WP 46 included a draft Rule 46 for the Rules of Procedure, and WP 56, which was co-sponsored by a number of Consultative Parties, included a revised draft for Rule 46. Rule 46 would prescribe the procedure to be used by the Executive Secretary for intersessional consultations.
- (30) A number of Parties supported the proposal by Japan and other co-sponsoring Parties. However, one Party raised concerns about the legal consequences of such a procedure, which could imply that the ATCM existed during the intersessional period. It pointed out that the ATCM only exists during its annual meetings. Also raised was the question of what would be the status of any decisions arrived at through the intersessional consultation process. Other delegations stressed that these decisions would not have the status of Decisions of the ATCM and that, in any case, they would have to be reported to the ATCM following the consultation process.
- (31) Japan presented a revised text of Rule 46 on intersessional consultation procedures and stressed that nothing had been changed in substance, but that the intent of the text was now clearer. The Meeting agreed to adopt Decision 3 (2005) *Amendments to the Rules of Procedure*.

***Item 5 (c). Attendance of non-Party states in the ATCM***

- (32) The United Kingdom introduced WP 55, which contained XXVI ATCM/WP 18 on the subject of the attendance of non-Party States to the ATCM. Since the Rules of Procedure had changed in the meantime, the detailed changes in the Rules of Procedure proposed in XXVI ATCM/WP18 had been omitted from WP 55. The United Kingdom emphasized the benefits that the opening up of meetings to non-Party States had brought to CCAMLR, where states that had been invited as observers had later acceded to CCAMLR and even become full members. There was a large difference between this practice and that of the ATCM, which had been inviting Malaysia during the last few years to observe the Meeting, but without a regular procedure. The ATCM needed to regularize this situation.
- (33) On the same topic, Chile introduced WP 54. Chile considered it a priority that those countries interested in conducting activities within the framework of the Antarctic Treaty System become Parties to the Antarctic Treaty. Accordingly, it proposed an amendment of the Rules of Procedure to permit attendance by non-Party States with an interest in the Antarctic.
- (34) There was general agreement on the need for the ATCM to adopt an open attitude towards non-Party States, and support from many Parties for the proposal to adopt a procedure dealing with their attendance to the meetings. One Party reiterated its opposition stated at the XXVI ATCM to formal changes in the present ATCM Rules of Procedure. That Party stated that the Antarctic Treaty System provides a clear procedure for states to join, namely by acceding to the Antarctic Treaty. Some concern was also expressed at the possibility of states using a possible observer status to postpone acceding to the Treaty indefinitely.

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- (35) The Meeting concluded that the Antarctic Treaty System has always been and remains an open system, which welcomes non-Party states to join it. There is no consensus to now adopt formal procedures regulating the attendance of non-Party states at the ATCM. At the same time it was accepted that the informal practice of the last few years of inviting a specific non-Party state to observe the Meeting could continue.

### ***Item 5 (d). Consultative Status***

- (36) The United Kingdom introduced WP 57, which was aimed at closing a possible ambiguity in Article 22 (4) of the Environmental Protocol, which requires that a Party is only entitled to appoint representatives to participate in Antarctic Treaty Consultative Meetings if it has ratified, accepted, approved or acceded to the Protocol. There is a possibility that Article 22 (4) could be interpreted to require only adherence to the Protocol and Annexes I - IV, whereas other Articles of the Protocol, namely Articles 9 (1) and 9 (2), make it clear that other Annexes (V and now VI) will, once effective, form an integral part of the Protocol. Therefore, Decision 2 (1997), which sets out the procedure whereby the entitlement of a Party to appoint representatives to participate in the ATCM is recognized, needed to be amended to make clear that the requirement of Article 22 (4) is that the Party in question not only has ratified, accepted, approved or acceded to the Protocol and Annexes I - IV, but also that it has approved all other Annexes which have been adopted subsequently and have become effective. The Meeting agreed to the proposal and adopted Decision 4 (2005) *Consultative Party Status*.

### ***Item 5 (e). Review of recommendations***

- (37) The Executive Secretary reminded the Meeting of Paragraph 54 of the Final Report of ATCM XXVII, which had deferred the adoption of a Decision concerning the legal status of past recommendations on protected areas to the XXVIII ATCM, since there were uncertainties as to the status of various recommendations and as to the terminology to be used in describing the status of these recommendations. There had been no developments on this issue in the intervening time, and experience from recent years had shown that, although the importance of achieving more clarity about the status of recommendations had been stressed more than once by the ATCM, the pressure of other, more urgent business had so far always prevented a thorough consideration of this matter during the annual meeting.
- (38) The Secretariat was developing the documentation that would be necessary for this work, which involves consideration of complex legal issues. Considering the lack of time during the regular meetings, the ATCM might consider the possibility of organizing an intersessional workshop on this issue with the legal experts of the Consultative Parties.
- (39) Parties generally recognized the importance of dealing with the question of the status of recommendations and the complexity of the issues involved, but there was some hesitation to now spend much time and work on this question. Parties stressed the

importance of preparing decisions on this matter with thoroughness and care for using the right terminology. The request of the CEP for the establishment of a register of the status of protected area management plans and review dates on the CEP and ATS websites (Paragraph 187 of the CEP VIII Report) was also recalled. The Meeting was reminded of its earlier agreement that Parties, when making a proposal, should review past recommendations, measures, decisions and resolutions on the same subject carefully to determine if any will cease to be effective upon adoption/approval of their proposal (Paragraph 20 of the XXVI ATCM Final Report). The Meeting decided that the subject would have to be addressed more thoroughly at a subsequent ATCM, and that the following documentation should be circulated by the Secretariat in good time before ATCM XXIX, and include at a minimum:

- The full text of each recommendation the status of which is in question;
- Subsequent recommendations which may have had an operative effect on the preceding recommendation; and
- Identification of the issues to be addressed.

After the ATCM has had an opportunity to review this material it will decide how to proceed.

#### ***Item 5 (f). Document Guidelines***

- (40) WP 43 on the document handling guidelines led to a discussion on the appropriateness of the Secretariat submitting Working Papers. The Meeting agreed that papers submitted by the Secretariat should be termed 'Secretariat Papers', with sequential numbering. These papers should be confined to either administrative matters within the purview of the Secretariat, or issues where the ATCM had directed the Secretariat to prepare documents. Secretariat Papers should always be made available in all the four languages. The next ATCM might consider formally amending the Rules of Procedure to provide for this new category of papers.
- (41) On the guidelines proposed in the paper, the Meeting felt that this issue might be better dealt with in a manual to be developed by the Secretariat before the XXIX ATCM.

#### ***Item 5 (g). Enquiry Procedure Article 18***

- (42) Chile introduced WP 53 on the enquiry procedure of Article 18 of the Environmental Protocol. The purpose of this paper, which has been introduced in different forms at earlier meetings, is to carry out a commitment made in the Final Act of the XI Special Antarctic Treaty Consultative Meeting (Madrid, October 1991). This was to elaborate an enquiry procedure according to the provisions of Article 18 of the Environmental Protocol in order to facilitate the resolution of disputes over the interpretation of Article 3 regarding the environmental principles to be considered when planning or conducting activities in the Antarctic Treaty area. In addition to a general explanation of the background, WP 53 contained two specific proposals to

carry out this commitment: a draft Enquiry Procedure and a proposal for the CEP to develop a Guide for the Application of Article 3. Chile proposed to set up a Working Group to further consider the issue and develop a procedure.

- (43) Delegations asked what kind of specific questions the proposed Enquiry procedure would deal with, and whether there were not existing mechanisms that could be used to deal with questions regarding Article 3 of the Environmental Protocol. Chile undertook to try to clarify the paper in this regard, and introduce it again at a subsequent ATCM.

***Item 5 (h). Review of Annex II of the Environmental Protocol***

- (44) The Meeting considered the review of Annex II to the Protocol. It was recalled there had been debate at CEP VII around fundamental issues such as the scope of the revised Annex. Several delegations said there was not time at this meeting to engage in deep discussion over this issue, and that there was a need to have a clearer understanding in order to move forward. The Meeting agreed that the review of Annex II should be revisited at ATCM XXIX. Some delegations expressed concern that the CEP had discussed policy and legal matters rather than only scientific and technical issues and drafted substantial proposals for revised texts, and said that the CEP should not engage in redrafting of annexes in the future. The Chair of the CEP advised that the CEP was not currently engaging in review of other annexes.

***Item 5 (i). Reinstatement of the environment***

- (45) The Netherlands introduced WP 72 *Scientific issues relating to the implementation of measures of reinstatement of the environment*. Many delegations were of the view that it would be useful if the CEP could consider the practicality, in the Antarctic Treaty Area, of such measures. In that context those Delegations believed that it would also be desirable if SCAR, in conjunction with COMNAP, and any other expert bodies could submit, as soon as feasible to the CEP papers on scientific and technical issues relating to measures aiming to repair or remediate damaged or destroyed components of the environment. Some other Delegations considered such examination as premature and emphasised the importance of evaluating the implementation of Annex VI and the related Decision.

***Item 5 (j). Other matters***

- (46) The Meeting took note of the appointment by Chile of Arbitrators according to Article 2 (1) of the Schedule to the Environmental Protocol, as reported in IP 111.
- (47) The Argentine delegation had noticed that document IP 65 makes reference to ships flying an alleged flag not recognized by the Argentine Republic, and to alleged authorities that are not recognized by the Argentine Republic. In that respect, the Argentine Government believed it appropriate to recall that the Malvinas, South Georgia and South Sandwich Islands, as well as the surrounding waters, are part of

the Argentine national territory. Being unlawfully occupied by the United Kingdom of Great Britain and North Ireland, those islands are subject to a sovereignty dispute between both countries that has been recognized by several international organizations. Therefore, the Argentine government rejected reference to the alleged flag and to the alleged authorities, as well as to the incorrect references to the legal and territorial status of the Malvinas, South Georgia and South Sandwich Islands and the surrounding waters, made at the meeting.

- (48) In response the United Kingdom indicated that it had no doubt about its sovereignty of the Falkland Islands, South Georgia and the South Sandwich Islands and their surrounding maritime areas. In that regard the United Kingdom had no doubt about the right of the Government of the Falkland Islands to operate a shipping register for United Kingdom-flagged vessels.
- (49) The Argentine delegation rejected the statement by the United Kingdom and reiterated its position. At the same time, it stated that any extra-Antarctic references in documents should be avoided in order to make discussions easier during the meetings.

## **Item 6: Operation of the Antarctic Treaty System: Situation of the Secretariat**

### ***Item 6 (a). Report 2004/5***

- (50) The Executive Secretary introduced WP 44 containing the report of the activities of the Secretariat in the financial year 2004/05 and a financial report. The first few months after his arrival in Buenos Aires had been devoted mainly to the recruitment of personnel, making general financial arrangements and setting up the IT infrastructure of the Secretariat. From February 2005 a basic operational setup had been functioning, and in the months since then the emphasis of the work of the Secretariat had been very much on the preparation of the XXVIII ATCM. The Executive Secretary stressed the development in a very short time of a data base of the documents of the XXVIII ATCM, which had already led to a much more flexible and accessible interface to the documents in the web page for the Meeting.
- (51) He drew the attention of the Meeting to the passages in the report concerning the discrepancy between the Staff Regulations of the Secretariat and the Headquarters Agreement with regard to the application of Argentine labour and social welfare law. It was noted that it was unfortunate that such a serious discrepancy was discovered in agreements that had only been negotiated two years ago with the full involvement of the host government. The Meeting agreed that the issue should be solved by amending the Staff Regulations, and that the Secretariat should prepare a draft of such amendments before the next ATCM with an explanation of why they are necessary under Argentine law. Such a draft should be provided to Parties in good time, well before the next meeting.

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- (52) On the financial report, the Executive Secretary pointed out that the ATCM had not yet appointed the External Auditor of the Secretariat. According to Regulation 11.1 of the Financial Regulations this has to be the Auditor-General or equivalent statutory agency from a Consultative Party. Argentina introduced WP 68, in which the Comptroller's Office of the Argentine Government (Sindicatura General de la Nación, SIGEN) is proposed as External Auditor. SIGEN is the statutory agency most suitable for this task, with full capability for all the aspects of an external audit of the Secretariat's account, and it is ready to undertake the task. While welcoming the proposal, the Meeting felt that the terms of reference proposed by SIGEN were too broad, since they not only included the financial audit required under the Financial Regulations, but also reviews of information technology and legal issues which would be more properly carried out by the ATCM separately. The Meeting adopted Decision 5 (2005) *Appointment of External Auditor*, in which SIGEN is appointed the external auditor for a period of two years with a mandate to carry out a yearly financial audit of the Secretariat's financial account and to report on its findings to the ATCM.
- (53) The Meeting noted and welcomed the report of the Secretariat. It was felt, however, that not enough information was given in some respects, e.g. with regard to travel expenses. The Meeting would like to have a clear listing of all travels with their purpose and a report of the results achieved. It was also remarked that not only in the financial report but also in the text part of the report it should be indicated clearly in which places there was a deviation from the programme agreed by the ATCM, with an explanation. The Executive Secretary promised to make the desired improvements in the next report of the Secretariat.
- (54) Delegations asked about the tasks in the report which had been left blank. The Executive Secretary responded that, since the Secretariat had only been operational from February and the report covered the year ending in March, no activity had taken place yet under some tasks. He was confident that in next year's report there would be an account of work done to carry out all tasks mandated to the Secretariat.
- (55) One delegation commented on the troubles the Secretariat had had with regard to the application of certain foreign exchange charges to the foreign remittances of the Secretariat, which were felt by the Secretariat and by the Consultative Parties to be in contravention of the Headquarters Agreement, and from which exemption was obtained after some months of negotiations. Would the exemption which was granted only apply to the bank where the Secretariat had its dollar account, the Banco de la Nación Argentina (BNA), or would it apply also to a situation in which the Secretariat decided to switch its account to another bank? If this would not be the case, there would be a question as to the freedom of the Secretariat, which is provided for in the Headquarters Agreement, to choose the most efficient and suitable bank. In practice, there had been long delays, even up to months, in the transmission of funds from the Parties to the account of the Secretariat in Buenos Aires, so the question of the choice of banks was an important one.

- (56) On the problems with the transmission of funds, the Executive Secretary referred to the fact that Argentina was not a completely open foreign currency market, and therefore dollar remittances cannot go directly to BNA in Buenos Aires, but have to be made to BNA New York, which then forwards these remittances to Buenos Aires. This causes a lot of problems in practice. This, and the fact that the automatic SWIFT system for international remittances sometimes provided little space for the identification of the Party remitting the money, was the reason why the Secretariat had urged Parties to email to the Secretariat with all details of their remittances on the day they made them. This procedure would enable the Secretariat to trace the remittances as quickly as possible. The question whether the exemption from certain foreign exchange regulations would also be applicable to the Secretariat if it chose to have its dollar account at another bank the Executive Secretary was unable to answer, so it was then put to the delegation of the host country of the Secretariat. The Argentine delegation stated that BNA was a very competitive bank, but that it undertook to provide an answer to this question in due course.
- (57) In connection with the financial affairs of the Secretariat, the CCAMLR Observer informed the Meeting that the balance of funds held by CCAMLR for the Antarctic Treaty Secretariat had now been transferred to the account of the Secretariat in Buenos Aires, and that the bank account used for collecting contributions for the Secretariat would be closed at 30 June 2005.
- (58) A delegation drew attention to the fact that, according to the list of contributions for 2004 in Annex I of the report some Consultative Parties had so far not made any contribution. The Executive Secretary confirmed that the list in the report was complete and that there had been no other contributions in the meantime. The US contribution pledged for 2004 would be received in short order. Delegations stressed the moral obligation of the Consultative Parties to pay their contributions, as otherwise the establishment of the Secretariat would be severely hampered. Russia announced that it expected to pay its contribution for 2005 in 2006, together with its contribution for 2006. Poland stated that it would pay its contribution for 2004 and 2005 this year or the beginning of next year. Belgium stated that payment of the contribution it had pledged for 2004 had been blocked at the last stage because of legal difficulties, but that its contribution would be paid in 2005. Spain said that its voluntary contribution had been the second one to be received for the year 2004, and that its contribution for 2005 would be made during this year. Uruguay explained that there had been an economic crisis in Uruguay in 2002, from which the country was only now recovering, but that it hoped its contribution would be paid in due course. Bulgaria stated that it had paid its contribution for 2005. Finland and Norway expressed their appreciation of the explanations made by Parties who had not paid in 2004, and accordingly announced that they would pay their contribution for 2005 soon after this meeting.
- (59) In connection with the Financial Report, Australia raised the matter of an inconsistency in the Financial Regulations. The regulations provide for a Working Capital Fund to ensure continuity in the Secretariat's operations, but it is not clear whether the ATCM could transfer a surplus in the budget to the Working Capital Fund. It was proposed

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to amend Regulation 6.2 (a) to provide that the Working Capital Fund shall initially be financed up to the specified level by a transfer from the General Fund, and thereafter from the fund determined appropriate by the ATCM. Decision 6 (2005) *Amendments to Financial Regulations for the Secretariat of the Antarctic Treaty* was adopted by the Meeting.

- (60) The Meeting expressed its appreciation to the Executive Secretary for the efficient and swift setup of the Secretariat.

### ***Item 6 (b). Programme 2005/06***

- (61) Introducing WP 45, containing the Secretariat's Programme for the year 2005/6, the Executive Secretary explained that as in last year's programme and report, the proposed activities of the Secretariat had been arranged under the different tasks mandated to the Secretariat in Measure 1 (2003). Many tasks have an element of data management in them, and the establishment of the databases needed for these tasks would occupy a large part of the Secretariat's work. For that reason, the Programme included a proposal to recruit a full time Information Technology Officer to strengthen the Secretariat's capabilities in that field. As the publication of the Final Report and other documents would also require extra manpower, it was also proposed to recruit an editorial assistant. The staff foreseen at the end of this year would be roughly of the size originally planned, although the positions originally planned of Financial Manager and Office Manager had been felt to be not needed for an office of the size of the Secretariat.
- (62) As to financial matters, the Executive Secretary pointed out that, if the Parties would make contributions at the same rate as in the preceding year, the budget would be roughly in balance. The programme included a proposal to set up a Special Fund to deal with the contribution for 2004 of the United States, which was in the form of a grant to strengthen the database development and documentary infrastructure. The Forecast Budget for 2006/07 (Annex 2) was compiled taking into account the inflation rates from the World Economic Outlook, namely 1.9% (the figure for industrial countries as a whole) for the international costs and 7.1% (the figure for Argentina) for the local costs of the Secretariat. The salary scale in Annex 4 had been calculated using the inflation rates indicated in the Forecast Budget approved last year, namely 3% for the international amounts and 6% for the local amounts.
- (63) One delegation questioned the proposal to set up a Special Fund to deal with the US contribution for 2004, as the contribution was not additional, but in lieu of the regular contribution. This might set an unfortunate precedent for other Parties. After some discussion, the Meeting concluded that the proposal could be approved to deal with a special situation in the start-up phase of the Secretariat, but that this should not be seen as a precedent to handle regular contributions.
- (64) The Meeting considered the Executive Secretary's attendance at meetings, in the context of the Draft Work Programme for 2005/2006. One delegation said that the

Secretariat's attendance at meetings of other relevant bodies, including within the Antarctic Treaty System, was an important way to raise its profile. It was noted that the CCAMLR Commission could only invite States and organizations, so the Executive Secretary of CCAMLR would need to issue a personal invitation to the Executive Secretary of the Secretariat of the Antarctic Treaty System.

- (65) The Meeting agreed that within the current financial year the Executive Secretary would attend the annual meeting of COMNAP and would visit the CCAMLR Secretariat at the time of the annual meeting of the CCAMLR Commission. Furthermore, in relation to a letter received at the Secretariat of the Antarctic Treaty from ICSU/WMO inviting an ATCM observer to the IPY Joint Committee, the ATCM agreed for the Executive Secretary to attend on behalf of the Antarctic Treaty Secretariat and report back to the ATCM.
- (66) His attendance at any other meetings would need to be agreed by the Consultative Parties using the intersessional consultation procedure in Rule 46 of the Rules of Procedure.
- (67) With regard to the attendance at international meetings or any other event involving official international travel it was agreed to adopt the following guidelines for the Executive Secretary and Secretariat staff to follow as far as practicable. The Executive Secretary and the Secretariat staff should:
- a) only attend a meeting at the invitation of that meeting, or its representatives;
  - b) obtain the agreement of the ATCM in advance of attending the meeting or event, either in the annual work programme, or consult the Consultative Parties intersessionally in accordance with Rule 46;
  - c) not represent or speak on behalf of the ATCM or Consultative Parties without their express approval; and
  - d) provide a report on attendance at the meeting or event to the ATCPs providing detail on information conveyed and relevant meeting or event outcomes.
- (68) Several delegations raised the point of the methodology, by which the forecast budget for 2006/07 was prepared, which was the same as that in Decision 2 (2004), namely to take the full cost of interpretation and translation of the annual meeting, about US\$ 400.000 at the present, into account, even though in practice the host country will continue to pay these costs in the period of provisional application of Measure 1 (2003). This methodology means a structural accumulation of surpluses. If provision should be made to absorb the cost increases that the coming into effect of Measure 1 (2003) would bring with it, it would be better to put the sum required into a Special Fund for this purpose, and remove the funds for interpretation and translation of the annual meeting from the Forecast Budget. The Meeting agreed and decided to include in its decision on the work programme and budget provisions to set up both the Special Fund agreed above (paragraph (63)) and the Special Fund to provide for the

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cost of interpretation and translation of the annual meeting following the coming into effect of Measure 1 (2003).

- (69) A revised version of the Work Programme of the Secretariat was prepared and approved in Decision 7 (2005) *Approval of the Work Program and budget of the Secretariat*.
- (70) It was pointed out that, since the financial year runs from April to March, whereas the ATCM usually takes place in the Northern Hemisphere summer, the Meeting needs to look ahead to the programme of work of the next year as well as that of the current year. The Meeting requested the Secretariat to provide ATCM XXIX with a forward work plan well as with a forecast budget for 2007-8.

### **Item 7: Report of the Committee for Environmental Protection**

- (71) The Chair of the CEP, Dr Tony Press, presented the Report of CEP VIII to ATCM XXVIII and noted that the CEP had formally welcomed the Czech Republic to the CEP table, the Republic having ratified the Protocol on 25 August 2004.
- (72) The Chair advised that the CEP had considered 37 Working Papers and 61 Information Papers, including 19 management plans for Antarctic Specially Protected Areas, 3 for Antarctic Specially Managed Areas, and two proposals for additions to the list of Historic Sites and Monuments. All papers considered are listed in Annex 2 to the CEP Report to ATCM XXVIII (Annex E).
- (73) The Committee had agreed to the Secretariat providing a template on the Secretariat website to assist with the consistent submission and presentation of Annual Reports under Article 17 of the Protocol, and also to the Secretariat assisting in the production of the annual list of IEEs and CEEs by developing a searchable database. The CEP recommended to the ATCM that Resolution 6 (1995) be reviewed in the light of the establishment of the Secretariat and to change the reporting year from 1 January - 31 December to 1 April - 31 March annually to ensure that each CEP Meeting can consider activities undertaken in the preceding Austral summer.
- (74) It was also considered that the Secretariat could assist the CEP and the ATCM by publishing information on the status of protected area management plans, and by making CEP meeting documents available via a searchable database.
- (75) The CEP Chair reported that the CEP had considered the matter of its formal working agenda and the likely future scenarios for its work. The outcomes of discussions on what CEP must do under the Protocol and CEP Rules of Procedure, and what major issues face it now and in the future are found at Annexes 5 and 6 of the report of CEP VIII, as guides for future discussion.

- (76) The Committee agreed to establish a steering committee, consisting of the chairman of the CEP, the two CEP Vice-Chairs, the Antarctic Treaty Secretariat, and the host of CEP IX, to prepare for a substantive discussion of the strategic issues facing the CEP at CEP IX and to stimulate continued discussions during the intersessional period. The United Kingdom, as host of CEP IX, offered to hold a workshop immediately before CEP IX on these issues.
- (77) The CEP recommended the Management plans at Appendix 3 of the Report of CEP VIII for adoption by the ATCM. It was also recommended that the ATCM add two sites to the List of Historic Sites and Monuments (Appendix 4 of the Report of CEP VIII). The CEP also requested the ATCM to consider extending the duration of management plans which are due to expire in the near future.
- (78) Two draft CEEs from the United Kingdom with respect to Halley VI (WP019) and Germany with respect to Neumayer III (IP030) were considered. The CEP considered that the draft CEEs provided comprehensive descriptions and evaluations of the proposed activities and their likely environmental impacts, and were consistent with the requirements of Annex I of the Protocol. The CEP's advice to the ATCM on the draft CEEs is contained in Appendices 1 and 2 to the CEP Report. The ATCM endorsed the CEP's advice.
- (79) New Zealand noted that the CEP had considered two CEEs relating to similar activities. However the conclusions drawn in relation to the environmental impacts of these activities were different.
- (80) Germany advised the Meeting that the process for evaluation of its CEE was not yet completed and that therefore the assessment made in relation to its proposed activity was not yet finalized and that the final version of the CEE would incorporate appropriate terminology regarding the significance of the environmental impacts.
- (81) The Committee discussed the 'Guidelines for Environmental Impact Assessment in Antarctica' (1999), and the work of the ICG on this matter. The CEP had adopted the revised Guidelines at Annex 7 to the Report of CEP VIII and recommended, as a consequence, that Resolution 1 (1999) be amended by the ATCM.
- (82) The Meeting noted that the CEP also discussed the matter of Specially Protected Species. The CEP agreed to adopt the Guidelines for CEP Consideration of Proposals for New and Revised Designations of Antarctic Specially Protected Species under Annex II of the Protocol. The ATCM endorsed the guidelines found at Annex 8 to the Report of CEP VIII.
- (83) Relevant matters contained in two inspection reports were also discussed. The CEP had noted that some bulk fuel facilities currently lacked secondary containment or were provided with inadequate bunding. The CEP recommended that the ATCM adopt a Resolution on the issue of fuel storage and handling.

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- (84) The CEP reported that it had considered recommendations on Heavy Fuel Oil on board ships south of 60 degrees south, and recommended that the ATCM ask the IMO to examine mechanisms for restricting the use of HFO in Antarctic waters.
- (85) The CEP reported also that it had considered reports from ICGs on the State of Antarctic Environment Reporting and Biological Monitoring, and had agreed that further intersessional work on Environmental Monitoring and Reporting would be undertaken (convened by Dr Yves Frenot of France). The CEP recommended that the Practical Guidelines for Environmental Monitoring in WP 26 (COMNAP) be endorsed by the ATCM and made available to all Parties for use in conjunction with the Environmental Monitoring Handbook. The ATCM endorsed these guidelines.
- (86) The Meeting noted that the CEP had re-elected Ms Anna Carin Thomer (Sweden) to a second term as Vice-Chair, and had elected Dr Yves Frenot (France) to the position of second Vice-Chair.
- (87) The CEP proposed to the ATCM the agenda for CEP IX contained at Appendix 5 to the CEP Report.
- (88) It was noted that when approving regulations regarding the management plans for specially protected areas it would also be necessary to have good quality maps available for subsequent reproduction.
- (89) In respect of Resolution 2 *Practical Guidelines for Developing and Designing Environmental Monitoring Programs in Antarctica* the CCAMLR observer noted that the CCAMLR Ecosystem Program applies standard data collection methods to monitor various Antarctic marine ecosystem indicators. Such data have been accrued over many years and could complement similar information collected subject to the above Resolution.
- (90) Germany agreed that prior to tabling a draft Management Plan for Fildes Peninsula and Ardley Island (King George Island) and following a proposal by Chile an International Working Group should be established, composed of those Parties with stations and/or huts in the area, Parties with an interest in the area as well as Observers to the Antarctic Treaty. This group will discuss the issues related to the Draft Management Plan. With this purpose, Germany will carry out two international workshops, one in September 2005 and another one in January/February 2006, in order to convene the participants on this issue.
- (91) The United Kingdom also noted that the representation of the ATCM at CCAMLR should be discussed as at present the ATCM is not formally represented at CCAMLR meetings. It was agreed that this issue required further discussion.
- (92) The UK introduced a draft Decision regarding the interaction between the ATCM and the CCAMLR on protected areas with marine components. This was a technical revision of the understanding agreed upon in 1997/98.

- (93) The Meeting noted the proposed revision to the agenda of the CEP IX and approved it.
- (94) The Meeting adopted the following measures, decisions and resolutions, arising from the advice of CEP VIII:
- Measure 2 (2005) Antarctic Specially Protected Areas: Designations and Management Plans
  - Measure 3 (2005) Antarctic Specially Managed Area and Antarctic Specially Protected Areas: Designation and Management Plans: Deception Island
  - Measure 4 (2005) Antarctic Specially Protected Areas: Extension of Expiry Dates
  - Measure 5 (2005) Antarctic Historic Sites and Monuments: Lillie Marleen Hut and Amundsen's Tent
  - Decision 8 (2005) Use of Heavy Fuel Oil (HFO) in Antarctica
  - Decision 9 (2005) Marine Protected Areas and Other Areas of Interest to CCAMLR
  - Resolution 1 (2005) Environmental Impact Assessment: Circulation of Information
  - Resolution 2 (2005) Practical Guidelines for Developing and Designing Environmental Monitoring Programs in Antarctica
  - Resolution 3 (2005) Fuel Storage and Handling
  - Resolution 4 (2005) Updating of Guidelines for Environmental Impact Assessment in Antarctica.
- (95) The ATCM Chair thanked the Chairman of the CEP for his efficient leadership of the Committee noting the importance of the issues discussed at the meeting.

### **Item 8: The Question of Liability as referred to in Article 16 of the Protocol**

- (96) The Working Group on Liability had before it the *Chair's Revised Personal Draft of 2 June 2004* (WP 47), the *Chairman's Report on Informal Consultations Convened in New York from 13 to 15 April 2005* (IP 109), together with *Outcomes of the Informal Consultations Convened in New York from 13 to 15 April 2005* (WP 48), and *Drafting and Other Proposals Presented to the Informal Consultations Convened in New York from 13 to 15 April 2005 Which Require Further Consideration* (WP 49). Further revisions of the Chair's draft were produced during the meeting as WP 48 Rev. 1, WP 48 Rev. 2 and WP 48 Rev. 2/Corr 1.
- (97) Discussions on draft Article 9 were conducted under the coordination of Mr Mark Simonoff (USA), on the basis of the revised text from the New York intersessional (WP 48).
- (98) The Working Group established an open-ended Drafting Committee, composed of representatives from each of the four language groups, in order to review and finalise

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the text of the draft Annex. The Drafting Committee was chaired by Mr René Lefeber (Netherlands). The draft Annex was revised and reported back by the Drafting Committee as WP 48 Rev. 3.

- (99) There was general agreement that it was appropriate to include a preamble in the draft Annex, notwithstanding the fact that a preamble had not been included in any of the existing Annexes, in order to set the Annex in the context of certain key considerations such as “the importance of preventing, minimising, and containing the impact of environmental emergencies on the Antarctic environment”, the provisions of Article IV of the Antarctic Treaty, Articles 8, 15 and 16 of the Protocol, the priority accorded to the preservation of Antarctic for scientific research, and Decision 3 (2001).
- (100) In the context of discussion on draft Article 1, concerning the scope of the Annex, many delegations emphasised the importance of the widest possible scope of application for the Annex. In respect of draft Article 1 in the Chairman’s revised draft of 2 June 2004 (WP 47), several delegations noted that it might not be appropriate for application of the Annex to be dependent on the way in which States Parties interpreted Article VII(5). Other delegations objected to a broad approach, noting that the obligation to take response action contained in Article 15 of the Protocol was limited to activities for which notification was required under Article VII(5). In response, others noted that the obligation under Article 16 of the Protocol applied more broadly to activities taking place in the Antarctic Treaty Area and covered by the Protocol.
- (101) In particular, several delegations proposed that the Annex should not be applied to the activities of fishing vessels, expressing the view that the relationship between the Protocol and activities covered by CCAMLR was regulated by the Protocol together with the Madrid Final Act, and that the issue was better addressed in that context. Several delegations were of the opposite view, and expressed their disappointment that it had not been possible to obtain agreement to include within the Annex environmental emergencies arising from the activities of such vessels, particularly given the number of such vessels operating in the Antarctic Treaty Area. These delegations expressed disagreement with the interpretation that such situations were adequately regulated by CCAMLR and so fell outside Article 16 of the Protocol. It was accordingly agreed to include a specific provision providing for other activities to be included within the scope of the Annex in the future, through the amendment procedure set out in draft Article 13.
- (102) It was considered that all tourist vessels, including those not landing tourists in Antarctica, should be covered by the Annex, in order to avoid any doubt in light of possible differing interpretations of Article VII(5), and there was general support to amend draft Article 1 accordingly. In this context it was also proposed that it would be appropriate in the future to consider specifically including the overflight of tourist aircraft within the Annex.

- (103) As regards draft Article 2(b) containing the definition of "environmental emergency", there was general agreement that the definition of "environmental emergency" contained in the Chairman's revised draft of 2 June 2004 (WP 47) should be amended to read "Environmental emergency` means any accidental event which has occurred and which results in, or imminently threatens to result in,...". It was also generally agreed to amend the draft definition to clarify that the Annex would only apply to accidental events that had occurred after the Annex has become effective.
- (104) There was extensive discussion of draft Articles 2(c) and (d) containing the definitions of "operator" and "operator of a Party", and general support for the proposal to separate the definitions into separate paragraphs. The definition of "operator" was further refined in order to make clear that it was not intended to include individuals carrying out, but not organising or responsible for, activities in the Antarctic Treaty area (such as, for example, the Captain of a vessel in that capacity, or individual members of an organised tourist expedition). It was also made clear that the term "operator" was not intended to include a juridical person that was a contractor or subcontractor acting on behalf of a State operator. It was understood that environmental emergencies arising from the activities of such juridical persons would be addressed through the provisions of the Annex relating to State operators.
- (105) In relation to draft Article 2(f) containing the definition of "response action", there was general agreement to replace "to prevent" with "to avoid" in order to clarify that this definition applied to measures taken to avoid the impact of an environmental emergency that had already occurred, not the broader concept of preventative measures as provided for in draft Article 3.
- (106) In this context, some concern was expressed with the inclusion of clean up measures in the draft definition. However, it was emphasised that the reference to clean up was in the context of measures to "avoid, minimise or contain the impact" of an environmental emergency, and was qualified by the references to "reasonable measures" and "appropriate circumstances" elsewhere in the definition. In addition, several delegations emphasised that the reference to clean up measures represented a careful compromise. In this context, some delegations expressed their disappointment that it had not been possible to reach agreement to include restorative or restitutionary measures within the definition.
- (107) In the context of draft Article 5, there was support for a proposal to include an additional paragraph 1(bis) (WP 49), with the intention of enhancing notification of environmental emergencies and exchange of information in order to better enable rapid and appropriate response action to be taken. Several delegations suggested that it was not necessary to create a specific obligation to provide such notification, and that this issue could be better addressed through another mechanism, such as a Resolution. In this context, it was noted that the issue had already been addressed in the context of the general reference to notification procedures in draft Article 4(3). It was also noted that it would be appropriate to expand Resolution 6 (2003) to

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include the exchange of such information. It was accordingly agreed that it was not necessary to include paragraph 1(bis) in the text.

- (108) In respect of draft Article 6(2) regarding the liability of an operator in a situation where no response action had been taken, there was considerable discussion of the need to maintain maximum flexibility in the drafting of this article, given that the mechanism used to implement the obligation would vary significantly amongst States. There was general agreement to distinguish between the situation of a State and non-State operator. It was emphasised, however, that notwithstanding the particular mechanism to be adopted, it was important that the amount of payment to be made into the fund should reflect as much as possible the costs of the response action that should have been taken. The view was also expressed that payment into the fund should not be deemed as having a punitive element.
- (109) Also in the context of this draft article, it was noted that the expression “should have taken prompt and effective response action but did not” was intended to encompass three situations: where no response action had been taken; where response action had been taken but it was not prompt; or where response action had been taken but it was not effective.
- (110) In the context of the discussion on draft Article 7, the Netherlands, on behalf of the Parties that were also members of the European Union, made a statement confirming the understanding that only a State Party might bring an action under draft Article 6(1) (a copy of this statement is attached at Annex H). Accordingly, the text proposed in ATCM XXVII / WP 34 was withdrawn.
- (111) In respect of draft Article 7(1), it was also understood that multiple actions would not be brought by the same Party against a single operator.
- (112) In respect of draft Article 8, for the purposes of insurability, a view was expressed that it was important to replicate the standard IMO defences from liability, as well as an exemption for acts of terrorism. It was noted in response that the specific context of the draft Annex might make the replication of all such defences inappropriate. A specific proposal was made however to include an additional exemption to cover environmental emergencies arising from situations of armed conflict or terrorism (WP 49). In this context, it was noted that such an exemption was included in several existing maritime liability conventions, and that insurance would not be available to cover liability in such circumstances. Several delegations expressed hesitation with regard to the proposal, noting that there was no accepted definition of “terrorism”, and that the exemption for armed conflict was unnecessary given that Antarctica had been preserved for peaceful purposes under the Antarctic Treaty. It was ultimately agreed to include an exemption regarding terrorism or acts of belligerency. It was also agreed to include a requirement that the operator asserting an exemption would have the burden to prove it.

- (113) Also in the context of draft Article 8, there was general agreement that it was not appropriate to provide a specific exemption from liability for scientific activities. In this regard, however, it was noted by some delegations that in circumstances where an environmental emergency had been caused by a scientific activity, the amount of compensation for which an operator might be liable should take account of that fact. Some concern was also expressed that the text was taking an unduly commercial approach.
- (114) In respect of draft Article 9(1), it was considered that the limits of liability in the case of an environmental emergency arising from an event involving a ship should reflect the limits of liability contained in the 1996 Protocol to the Convention on the Limitation of Liability for Maritime Claims (LLMC). In this context, regard was had to the benefit of compatibility between the draft Annex and existing liability regimes for insurance purposes.
- (115) An appropriate savings clause was inserted into this article to clarify the relationship between the draft Annex and the liability or right to limit liability under existing international regimes limiting liability in respect of States that were Party to those regimes. In this context it was understood that under draft Article 7 a non-State operator would generally be sued for liability pursuant to draft Article 6(1) in the courts of the Party where the operator was incorporated or had its principal place of business or his or her habitual place of residence. A Party as a State operator would not be subject to any actions in a Party's domestic courts.
- (116) In respect of draft Article 9(1)(b), several delegations supported the adoption of a higher limit of 4 million Special Drawing Rights (SDR) in respect of a land-based environmental emergency, given the special nature of the Antarctic environment. On the other hand, several delegations supported a lower limit of 2 million SDR, and emphasised the importance of basing the limit of liability in respect of a land-based environmental emergency on the worst case scenario figures advised by COMNAP, taking account of the potential that higher limits could unreasonably deter legitimate activities such as scientific research.
- (117) Regarding draft Article 9(3) in response to a concern raised by a delegation, it was noted that the reference to “committed with the intent to cause such emergency, or recklessly and with knowledge that such emergency would probably result” was intended to ensure that the limits of liability were only excluded in the most serious circumstances of culpability; that is, where the harm was either done intentionally or with such recklessness and knowledge that it almost equated to intention.
- (118) In the context of draft Article 9(5)(b) defining ‘Special Drawing Rights’, there was discussion of whether it was necessary to specify a date for conversion of SDR into national currency. The group concluded that Article 9 itself did not need to specify a date or method for ascertaining that date. However, Parties should provide a method for ascertaining the date of SDR conversion in their national laws implementing the Annex, with regard to actions specified in draft Article 7(1) and the enforcement

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mechanism in draft Article 7(3). In respect of actions specified in draft Article 7(1) there was much support for specifying in national law the date of judgment as the date of conversion. In respect of arbitration under draft Articles 7(4) or 7(5), there was support for the notion that the date of conversion would best be determined in the context of the applicable procedure, and that in the case that liability under these provisions was resolved by recourse by an arbitral tribunal, the date of conversion might best be the date of the award.

- (119) Regarding Article 11, with respect to the obligation to require operators to maintain adequate insurance or similar financial guarantee, it was emphasised that it was important to ensure that satisfactory insurance would be available in order to enable the Annex to operate effectively and to ensure that legitimate activities were not unintentionally or unreasonably deterred.
- (120) In that context, advice was provided regarding the unavailability of insurance cover for environmental emergencies arising from armed conflict or terrorism. The point was also made that, should Parties decide to implement the liability under draft Article 6(2) by way of criminal sanction, it would in many cases be very difficult for operators to obtain insurance against such liability. There was general agreement therefore to amend draft Article 11 to clarify that the obligation to require insurance was mandatory only in respect of liability under draft Article 6(1), but that Parties could choose also to require insurance in respect of liability under draft Article 6(2) if they so wished.
- (121) One delegation also expressed the view that the requirement for compulsory insurance for land-based activities might endanger the entry into force of the Annex since – at least for the time being – insurance covering the liability for land based activities under the Annex seemed not to be available. Taking into account the uncertainty as to whether such insurance would be available in the future, and acknowledging in particular the interests of operators and the insurance industry in insurance being available and the liability limit of 3 million SDR, that delegation was prepared to accept the requirement under draft Article 11(1) in order not to hinder adoption of the Annex.
- (122) Some delegations expressed hesitation that, given the breadth of the proposed definition of “ship”, the limits of liability in draft Article 9(1) would also apply to very small vessels such as yachts and landing craft, which would be most unlikely to create an environmental emergency within the definition of the Annex and proposed that such vessels be exempted from the obligation to maintain insurance. In this context, it was noted that under the existing insurance market it could be difficult or prohibitive for such vessels to obtain insurance to the prescribed limit. It was noted however, that some very small vessels such as liferafts or tenders would be included within the insurance cover obtained for the primary vessel.
- (123) In respect of draft Article 12, it was generally accepted that there should be no automatic right to receive reimbursement from the fund, and that the ATCM would retain the discretion in all cases whether or not to approve applications for

reimbursement. The structure of the draft article was amended in order better to reflect this approach.

- (124) There was no objection to the proposal that draft Article 12(3) in the Chairman's revised draft of 2 June 2004 (WP 47) should be deleted, on the basis that any other function for the fund lay outside the scope of the Annex.
- (125) The Meeting adopted Measure 1 (2005) *Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty – "Liability Arising From Environmental Emergencies"*.
- (126) Bearing in mind Decision 3 (2001), and the view of several delegations that the draft Annex did not completely discharge the obligations under Article 16 of the Protocol, the Meeting also adopted Decision 1 (2005) *Annex VI on Liability Arising from Environmental Emergencies to the Protocol on Environmental Protection to the Antarctic Treaty*, in order to record the intention to review on an annual basis steps towards entry into force of the Annex and to take a decision not later than 5 years after the adoption of the Annex on the establishment of a time-frame for the resumption of negotiations, in accordance with Article 16, to elaborate further rules and procedures as may be necessary relating to liability for damage arising from activities taking place in the Antarctic Treaty Area and covered by the Protocol.
- (127) The Meeting congratulated Ambassador Don McKay who directed this discussion with incredible patience and skill.
- (128) Argentina stressed that adoption of the Liability Annex had been achieved thanks to consensus which is the golden rule in Antarctic cooperation. It also thanked the work done by Professor Francesco Francioni, Rudi Wolfrum, and many others who have made it possible for the Antarctic Treaty Meeting to arrive at this conclusion.
- (129) Australia warmly welcomed the adoption of Annex VI and congratulated Ambassador Don McKay and the host country.
- (130) The United States joined in welcoming this great achievement, considering it a true milestone in the Antarctic cooperation.
- (131) Sweden expressed its warm appreciation as host country of the XXVIII ATCM for the adoption of Annex VI at this meeting.
- (132) Ambassador Don McKay remarked that it had been a very long process and that very many people had been involved. He said that the spirit of camaraderie and flexibility shown during the years of negotiations had been essential to provide solutions and to enable the ATCM to get consensus on this issue. Ambassador McKay also thanked Sweden for the huge effort it had made to wrap this issue up during this meeting.

## Item 9: Safety and Operations in Antarctica

(133) COMNAP introduced IP 67 Rev 1 *The use of Heavy Fuel Oil in Antarctic Waters*. The paper was presented as a response to a request at XXVII ATCM. COMNAP and IAATO had conducted a survey on the fuel used in the Antarctic Treaty area by ships currently operated or chartered by their members. The survey collected fuel information on 50 of the 72 ships operated by their members. None of the 50 ships surveyed carries Heavy Grade Oil in the Antarctic Treaty Area. Of the 50 ships:

- 6 ships carry Intermediate Fuel Oil IFO-180
- 2 ships carry lighter Intermediate Fuel Oil IFO – 040 and
- The remaining 42 ships carry a range of lighter fuel such as Diesel, Marine Gas Oil (MGO) or Marine Diesel Oil (MDO).

Fuel information was available for 3 of the 5 other ships (non-COMNAP and non-IAATO) known to operate in the Antarctic Treaty area. One of those three ships is understood to carry Heavy Grade Oil in the Antarctic Treaty area.

(134) France asked for a minor correction to be made to WP 41 *Proposal to submit a proposal to IMO to ban the presence of Heavy Fuel Oil (HFO) on board ships south of 60° South*, believing that the HFO tanker referred to in the document as *Erika* was in fact the tanker *Prestige*.

(135) The Meeting took note that the topic of Heavy Fuel Oil had been well-covered in the CEP and that a decision had been agreed by the Meeting.

(136) Germany reported on an aircraft accident with a Dornier 228-101 aircraft (POLAR4) which occurred at Rothera Research Station (UK) on 25 January 2005 during its northbound demobilization flight at the end of the 2004/2005 season. Two of the crew had been slightly injured. However, the aircraft sustained substantial structural damage to its landing gear and the fuselage. Consequently POLAR4 was dismantled and removed by vessel from Antarctica. Germany expressed their thanks to the UK and to the staff at Rothera Research Station for the very efficient assistance and helpful arrangements. Likewise the support provided by South Africa was highly appreciated. All international emergency assistance and coordination had worked very well and Germany considered it an excellent example of international cooperation.

(137) China expressed its gratitude towards the assistance received from the USA concerning the rescue of a member of a Chinese expedition travelling to Dome A in December 2004. Russia and Ukraine also expressed gratitude for international assistance received during emergency situations and expressed willingness to help other countries in similar situations.

(138) The UK introduced IP 38 *Report on the research study undertaken by the UK investigating interactions between Humans and Leopard Seals in Antarctica*. At last year's ATCM the UK informed the Meeting of the death of a marine biologist,

attacked and drowned by a Leopard Seal at Rothera Research Station in July 2003. Since this tragic incident the BAS had changed its diving procedures. A full report of the research study and the new procedures being used by BAS will be provided to COMNAP.

### **Item 10: Relevance of Developments in the Arctic and in the Antarctic**

- (139) Sweden pointed out that it was disappointed to see little discussion on the links between the Arctic and the Antarctic and stressed the importance of both regions. In this regard IPY should be seen as an opportunity to develop bi-polar links. Sweden wanted to bring the issue forward to the next meeting of the ATCM.

### **Item 11: The International Polar Year 2007/2008**

- (140) SCAR introduced IP 94 *Progress implementing the International Polar Year 2007-08*. An IPY Programme Office (IPO) has been established by ICSU and WMO at the British Antarctic Survey, Cambridge. Dr David Carlson has been appointed by ICSU and WMO as Director of the IPO.
- (141) COMNAP expressed its strong interest in the progress made in the elaboration of several scientific programs by the Parties. Besides, it emphasized the need for having – as soon as possible – knowledge of the main projects proposed in order to be able to coordinate the field facilities required for implementation of projects.
- (142) New Zealand thanked SCAR and Dr Carlson, as well as COMNAP, for their updates, and noted the excellent progress being made in planning for the IPY. New Zealand requested more detailed updates on the planning for IPY at the next ATCM.
- (143) Japan introduced its IP 106 *Outreach activity on the Polar Research in conjunction with IPY 2007-2008*.
- (144) Australia introduced IP 115 *Census of Antarctic Marine Life – A SCAR-supported field activity for IPY 2007/08*.
- (145) Australia explained that the Census of Antarctic Marine Life is a 5-year project conducted under the umbrella of the Census of Marine Life, and has already commenced. Funds for scientific coordination have been obtained from the Alfred P. Sloan Foundation (New York). The project would create a baseline of data on the basis of which future assessment of change in the Southern Ocean could be made. The website for the project is *www.caml.aq*.
- (146) France stated they were concerned that IPY will have a large media impact and attract more tourists to Antarctica. It stressed the importance of being prepared for

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the number of tourists that might be coming, and suggested that this question should be considered by the Tourism Working Group, as well as by the CEP.

- (147) IAATO thanked France for raising concerns over increased activity in this regard that may occur during IPY. IAATO members are indeed receiving requests to provide logistic support from Parties and NGOs for IPY research programmes. IAATO shares France's concerns about increased activity and will work closely with the CEP so that there is good co-operation and management during the period leading to IPY.
- (148) The Russian Federation introduced IP 45 on the activities to prepare for the IPY 2007/08. Russia explained that a national committee is already working on IPY activities and offered to collaborate with other Parties on IPY projects.
- (149) ASOC thanked the Russian Federation for information on the plans for IPY. ASOC asked for an update about plans for drilling at the sub-glacial lake Vostok.
- (150) The Russian Federation responded that the plans are in accordance with the decisions and agreements reached at ATCM XXVI (Madrid) and that national permission for drilling another 50 meters of ice had been given. In 2005-2006 the drilling in Vostok would therefore be continued for another 50 meters of ice. This would not imply any penetration into the water region of the Vostok Lake.
- (151) The ATCM noted the excellent progress made in the planning for IPY and reaffirmed its support for this exciting science initiative. Parties are urged to include the IPY core projects related to the Antarctic in national research programmes and to provide financial and logistic support for their implementation.
- (152) The following Information Papers were also submitted under Agenda Item 11: IP 34 (Australia) and IP 104 (ASOC).

### **Item 12: Tourism and Non-Governmental Activities in the Antarctic Treaty Area**

- (153) The issues discussed under this agenda item were divided into four broad categories:
- Site specific guidelines;
  - Land-based tourism;
  - Creation of areas of special tourist interest; and
  - Accreditation.
- (154) Uruguay submitted IP 56 *Visitors Programme to the "Artigas" Antarctic Scientific Base* in which it described the programme as a selective, restricted programme that supports scientific projects and is conducted in a responsible manner in compliance with environmental and safety principles.

- (155) IAATO introduced IP 82, *IAATO overview of Antarctic Tourism 2004-2005 Antarctic Season* and IP 95 Rev.1, *Report of the International Association of Antarctica Tour Operators 2004/2005*. It underlined that cooperation is good both with members and non-members, and that it tries to include non-member vessels in its schedules and lists of vessels. With respect to the increase in Antarctic tourism, the data needs to be interpreted with caution given improvements in data collection over the past three years. IAATO also pointed out that one should be careful in using overall figures of tourism in Antarctica, since cruising and overflights do not have the same potential environmental impact as land-based tourism. It underlined the importance of government, tour operators and NGOs working closely together. Operators presently come from 13 different countries and IAATO urged delegations to make sure that operators based in their countries follow national regulation. IAATO foresees a further increase in Antarctic tourism. It has the structure to handle the increase, but would welcome governmental regulation where appropriate.
- (156) ASOC introduced IP 119 *Antarctic Tourism Graphics: an Overview of Tourism Activities in the Antarctic Treaty Area*. The document reviewed graphically the type, level, geographical distribution and trends in tourism activities in 2003-04 season, based on IAATO and *Instituto Fueguino de Turismo (InFueTur)* statistical data, Antarctic Treaty System documents and peer-reviewed academic journals. The total number of passengers, staff and crew entering the Antarctic Treaty Area during the 2003-04 season was over 43,000. Ten maps were produced showing the distribution of activities, the ten most visited sites in the region, the distribution of camping, climbing, diving and kayaking activities, the distribution of Historic Sites and Monuments (HSMs) visited by tourists and the global spread of the Antarctic tourism industry as reflected by the states in which tourists originate, Antarctic tourist operators are located, and ships engaged in Antarctic tourism are flagged.
- (157) The UK introduced WP 31 *Site Guidelines for Land-Based Tourist-Visited Sites* noting that the texts of the four Site Guidelines attached to it had also been tabled at ATCMs XXVI and XXVII where they had been the subject of examination. The UK indicated two modifications had now been addressed in WP 31. The Guidelines were now addressed by a proposed free-standing Resolution, rather than the former proposal to amend Recommendation XVIII-I. In addition a derogation to address yachts had been included.
- (158) The Meeting welcomed the proposal which would provide for specific management prescriptions for these sites. The Meeting agreed however that the more generic term ‘visitor’ was more appropriate than ‘tourist’. Such a change would ensure consistency with Recommendation XVIII-I and address all who visited such sites for recreational purposes.
- (159) The Meeting stressed the need for the Site Guidelines to retain flexibility. It was felt important that the Guidelines must be dynamic. They must be able to be modified with relative ease to meet changing environmental circumstances or changing patterns

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of visitor pressure. In addition the Meeting believed it important that such Guidelines should be disseminated to as wide an audience as possible, especially among visitors.

- (160) Accordingly Resolution 5 (2005) *Resolution on Site Guidelines*, was adopted. Furthermore the Meeting requested the Secretariat to incorporate the Site Guidelines as adopted on its website and to publish them both in hard-copy and electronic (e.g. CD-ROM) formats.
- (161) Recalling the Report of the CEP, the Meeting mandated the Chairman of the CEP to establish an ICG with a nominated convenor to review, prior to ATCM XXIX, any further Site Guideline proposals as well as the Site Guideline texts already adopted. It was agreed that Site Guidelines should thereafter be kept under review by the CEP, and modified accordingly. In that regard the Meeting indicated that there would be virtue in the intersessional review process also examining IP 81 *Site Guidelines Analysis* and IP 90 *IAATO Site Specific Guidelines in the Antarctic Peninsula*.
- (162) IAATO presented IP 89 *Proposed Amendments to the Standard Post-Visit Site Reports Form by the International Association of Antarctica Tour Operators (IAATO)*. These site reports forms are compliant with Recommendation XVIII-1 and Resolution XIX-3. The amendments allowed for the inclusion of additional tourist activities and for direct input into the IAATO database which generates the overall tourism statistics.
- (163) The Meeting welcomed IAATO's proposal noting that an amendment of these forms could not be done without a new Resolution replacing Resolution XIX-3. The Meeting approved the proposed amendments to the form and, accordingly, Resolution 6 (2005) *Antarctic Post Visit Site Report Form*, was adopted.
- (164) The issue of land-based tourism was introduced by WP 038 *Protection of Antarctica's Intrinsic Values: Policy on Non-Government Activities* presented by Australia. It stressed that permanent land-based tourism facilities were not consistent with Antarctica's designation as a "natural reserve devoted to peace and science" and brought with them a number of concerns. Those concerns included inconsistencies between such developments and the designation of Antarctica as a natural reserve, the undesirability of any tourist activity that would have more than minor or transitory impact on the Antarctic environment, likely impacts on wilderness and aesthetic values of Antarctica, and the requirement to accord priority to scientific research.
- (165) New Zealand, which had submitted a document on the same issue and to the same effect, WP 12 *Land Based Tourism in Antarctica*, congratulated Australia and confirmed support for its proposal. New Zealand stressed that science was given priority over other activities in the Antarctic Treaty and in the Protocol and that the requirement for a "no more than minor or transitory impact" had to be the rule for tourism. Permanent facilities such as hotels would contravene the principles of the Protocol and tourist infrastructure could seriously affect national program activities.

Responsibility for the regulation of tourism should not be left in the hands of the tourism industry.

- (166) Germany introduced IP 20 *The Admissibility of Land Based Tourism in Antarctica under International Law*. Taking a legal approach it concluded that land based tourism requiring the establishment of permanent tourist facilities on the Antarctic continent was incompatible with the meaning and purpose of the Treaty System on the Antarctic continent. A few delegations declared that they would draw different legal conclusions with regard to certain contents of the paper.
- (167) Delegates agreed that they shared concerns about the undesirable possible consequences of the development of such permanent and semi-permanent infrastructure. Some delegations were aware of proposals or expressions of interest in building Antarctic facilities for tourism, and many viewed it as likely that Treaty Parties would face more proposals in the near future.
- (168) Some delegates also emphasised the importance of referring to the obligations in Article 3.3 of the Protocol in their entirety and noted that the correct wording is now reflected in the Preamble to Annex VI on Liability.
- (169) After discussions on these issues it was acknowledged that tourism was not a prohibited activity in Antarctica, but that the issue of land based tourism involving permanent infrastructure in the Antarctic needed to be addressed.
- (170) Some delegations favoured the adoption of new binding regulations prohibiting such activities, whereas some others believed that these activities could be controlled through existing instruments such as Environmental Impact Assessment procedures defined in Article 8 of and Annex I to the Protocol. Some delegations reminded Parties of the compliance obligations in Article 13 of the Protocol. Following further discussions, a number of Parties proposed a Resolution on this issue, but a consensus was not reached.
- (171) While many delegations were prepared to recommend that Parties implement the Environmental Protocol in such a way as to prevent the construction of infrastructure to support activities primarily for the conduct or support of tourism, some requested a more in-depth analysis, and felt the ATCM should devote more time to discuss the issue before deciding whether or not to take binding actions. Several delegations expressed concerns about the limited time to “close the door” on such developments. Various delegations stated however that under their current domestic laws it was difficult to prohibit permanent and semi-permanent facilities for tourism and other non-governmental activities. One delegation proposed that it was open to the Parties to voluntarily decline to authorise any applications to construct permanent land-based infrastructure to support tourism and non-governmental activities. There was strong support for this approach pending the conclusion of further discussions on this matter.
- (172) The Meeting agreed to re-visit this matter at ATCM XXIX.

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- (173) ASOC introduced IP 71 on *Some Legal Issues Posed by Antarctic Tourism* which, it suggested, included matters of jurisdiction, use or usufructuary rights and property rights. In relation to the last, ASOC pointed to the purported sale of real estate on the moon as a possible indicator that present legal assumptions may be challenged by practice. ASOC concluded by proposing a series of responses by Parties, including particular efforts to ensure that no basis for private property or use rights were created domestically, in states' Antarctic practices, or through ATCM documents such as protected area management plans.
- (174) The Russian Federation introduced IP 48 *On Possible Regulation of Non-Governmental Activity in the Antarctic Treaty Area*. It stressed that regulation should be extended to all non-governmental activities and not confined to tourism. It drew the attention of the Meeting to the existence of "carriers" that refused to take responsibility for the actions in the Antarctic of the persons they transported there and did not lodge any impact evaluation or request permits for those.
- (175) France introduced IP 12 *Creation of Areas of Special Tourist Interest*, noting that the issue had already been discussed in 1972, and stressed that the increase in tourism may bring Parties to considering limiting tourism to certain areas. The Meeting welcomed this paper and agreed that such an option should be kept in mind when dealing with the regulation of tourism.
- (176) Uruguay submitted IP 13 *Organisational Aspects Contributing to the Establishment of an Antarctic Tourism Accreditation System* which referred to regulating and monitoring functions of the Parties.
- (177) The UK introduced WP 18 *Report of the Intersessional Contact Group on Accreditation Scheme for Antarctic Tour Operators*, noting that creation of that group had probably been premature as some political issues needed to be solved first. The group had not been able to reach agreement on important points, including on whether an accreditation scheme should be voluntary or compulsory. It was not even able to agree on whether there was a need for adopting a scheme or whether existing procedures could be used. In this context the UK proposed that IAATO present its IP 96 *An Update on IAATO's Accreditation and Audit Scheme*.
- (178) IAATO presented IP 96 consisting of a brief summary of the development of its accreditation scheme and its plan to trial test the process during the 2005-06 season. IAATO's accreditation scheme addresses the growth of tourism within IAATO and Antarctica in general. It formalizes IAATO's existing guiding principles, establishes a formal compliance mechanism and ensures best practices.
- (179) Several delegations complimented IAATO on the comprehensive work. Some delegations expressed interest in contributing comments to IAATO's draft document and participating in the future development of this process. IAATO agreed to keep those delegations informed on the process and will circulate a draft for comment to those delegations.

- (180) In discussing the development by IAATO of an industry approach to accreditation, the Meeting agreed that there be consultations between interested delegations and IAATO in the period before ATCM XXIX. One delegation said that intersessional consultations would not be appropriate for settling the policy approach, and another queried the status of such consultations. The Meeting welcomed the proposal by Australia that this not be an intersessional contact group but that IAATO would provide copies of its proposal, as it is drafted, with a view to keeping interested delegations informed of progress in their thinking. While delegations may be invited to make suggestions, responsibility for the proposal would remain with IAATO and IAATO would present a proposal on accreditation to ATCM XXIX for detailed consideration, when the ATCM would discuss all options for accreditation.

### **Item 13: Inspections under the Antarctic Treaty/Protocol**

- (181) The United Kingdom introduced WP 32 *Report of Joint Inspections under Article VII of the Antarctic Treaty and Article 14 of the Environmental Protocol* regarding a report of a joint inspection carried out by the UK, Australia and Peru under Article VII of the Antarctic Treaty and Article 14 of the Environmental Protocol. The inspection was in the Antarctic Peninsula region. Speaking on behalf of Peru and Australia, and extending thanks to these countries for their participation and cooperation in the inspection, the UK stated that many of the elements of the Working Paper had already been addressed by the CEP (Paragraph 42-59 of the CEP Report refers). The joint inspection had visited nine permanent stations, five summer stations, one station under construction, five Historic Sites and Monuments, one tourist vessel, and three unoccupied stations.
- (182) The UK explained that in accordance with Article 14 of the Environmental Protocol the inspection reports of the individual stations had been circulated to the Parties concerned for comments. This had been very useful in checking facts.
- (183) The UK also highlighted the following recommendations made in the Working Paper:
- a) that Parties, particularly those whose stations in Antarctica are in close proximity, should ensure that they liaise and co-operate on scientific research, as appropriate, to ensure that duplication of science is minimized and scientific priorities are addressed in the most effective manner;
  - b) that SCAR, in furtherance of the above, should consider undertaking an in-situ audit of scientific research in Antarctica;
  - c) that Parties should prepare detailed reports on their stations and other facilities in Antarctica. Such reports should be in the format of the Inspection Checklist adopted by the ATCM, reviewed and updated regularly, and placed on the website of both the Antarctic Treaty Secretariat and COMNAP.
  - d) that Parties should prepare, and make publicly available policy statements on tourism in relation to their Antarctic stations.

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- (184) The UK also desired to draw attention to the issue of unoccupied stations. The UK recommended that Parties which own unoccupied stations should consider options for them which might include their re-use, removal, transfer to another Party or conservation as a Historic Site and Monument.
- (185) Ecuador explained that the Maldonado station was a summer base. An expedition had been carried out there during summer of 2004 as described in Information Papers IP 82 and IP 83. Ecuador remarked that information about the expedition and the scientific research are posted on the web as described in IP 88.
- (186) Australia explained that it was a strong supporter of the Inspection System provided by the Antarctic Treaty. As Australia, due to geographical reasons, generally focuses its Antarctic-related activities on the eastern part of the continent, it has found it difficult to take part in international inspection programmes in the past. Therefore, the joint inspection with the UK and Peru had been important, enabling Australia to participate and learn about activities in the Antarctic Peninsula at first-hand. Australia endorsed the use of joint inspections by Parties, since it underscores the spirit of international co-operation in the Antarctic Treaty System.
- (187) Uruguay congratulated the inspection team on its work, and commented that ECARE station has been continuously visited since its transfer from the UK. Furthermore, the site has been cleaned up, with more than 30 m<sup>3</sup> waste from past activities having been removed. During this year, extreme adverse meteorological conditions prevented the station from being repaired. In spite of this, cargo and supplies were left at the Artigas Base, and it is planned to continue repairing ECARE station next summer season.
- (188) Argentina thanked the inspection team for the report. Argentina considered that there are in the report some minor mistakes in relation to the inspection of Argentine bases. Argentina stated that there are no references to military ranks in the names of its bases, and that the Brown Base had been classified as unoccupied although it had been occupied only a few days before the inspection. One of the Observers lacked the correct accreditation from their Government and this, although probably an administrative mistake, was inconsistent with the requirements of the Antarctic Treaty. All information of the Argentine Antarctic program is available on its web site [www.antartida.gov.ar](http://www.antartida.gov.ar). Argentina said that important scientific data collection and sampling does not have to be done by scientists, and that qualified technicians make important contributions to research. 40% of its scientific work is done in cooperation with other Parties.
- (189) In relation to the recommendation regarding guidelines on tourism at Antarctic stations, Argentina noted that Parties have different policies on tourism for their Antarctic stations and therefore different guidelines. Argentina's experience is that tour operators have always respected the guidelines established by IAATO. Argentina explained that the recommendation that SCAR should conduct an audit should be carefully considered in the ATCM if it is intended to make a change in the Inspection System.

- (190) Spain expressed its gratitude for the manner in which the base inspections had been carried out and voiced strong support for international cooperation. As an example, Spain drew attention to the cooperation it has with Argentina, Uruguay, Chile, and Bulgaria. Spain supported Argentina's statement that one member of the inspection team lacked proper accreditation, and agreed that an audit by SCAR had to be discussed further.
- (191) New Zealand welcomed the high quality and comprehensive coverage of the report and noted that it provided a useful snapshot of stations in the Peninsula. New Zealand also referred to the inspection of the non-governmental base on Nelson Island occupied by Czech nationals. New Zealand noted that the Czech Republic had now introduced domestic legislation to give effect to the Environmental Protocol, and sought advice from the Czech Republic as to whether this station would now be subject to the provisions of that legislation.
- (192) SCAR noted with interest the recommendation in the inspection report as well as the various comments by the Parties, that it should carry out an in-situ audit. The recommendation, and the various views expressed, will be considered carefully by SCAR. However, SCAR noted that such an audit would be virtually impossible to carry out given the large number of stations in Antarctica and their widely dispersed location.
- (193) Ukraine expressed its gratitude for the recommendations in the inspection report, which it is following up and implementing.
- (194) Bulgaria noted that the suggestions put forth by the inspection report would be useful for its Antarctic programme. Like Spain, it stressed the excellent international cooperation in the Antarctic Peninsula, without which Bulgaria's programme would not be able to exist.
- (195) Chile referred to the recommendations in the Inspection report regarding the Eduardo Frei Station and regretted that the inspection team did not visit the station to collect information. Chile explained that every activity at Frei had been sanctioned by the Chilean National Environmental Agency and this information is available on the web ([www.conama.cl](http://www.conama.cl) and [www.e-seia.cl](http://www.e-seia.cl)).
- (196) The UK pointed out that the inspection could only provide a snapshot of activities in the Antarctic Peninsula. Since the intention was to make the inspection report as fair and objective as possible, the UK was very grateful for the comments made by several Parties. In relation to the recommendation on tourism, this was aimed at making tourism policies for Antarctic stations more transparent and widely available.
- (197) Australia submitted WP 16 *Scott Base and McMurdo Station: Report of an inspection under Article VII of the Antarctic Treaty and Article 14 of the Protocol on Environmental Protection*. It had already provided a summary of the report to the CEP.

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- (198) Australia reported that there was full compliance with the provisions of the Antarctic Treaty at both stations inspected.

### **Item 14: Science Issues, particularly scientific co-operation and facilitation**

- (199) SCAR reported that WP 33 *De-listing Antarctic Specially Protected Species* and WP 34 *Proposal to list a Species as a Specially Protected Species under Annex II* had been reviewed at the CEP and therefore should not be discussed under this item.
- (200) Romania introduced IP 61 *Romanian Scientific Antarctic Activities in cooperation with China, Russia and Belgium* and IP 62 *Romanian Scientific Antarctic Activities 2005-06: Scientific Programme Summary in cooperation with Australia* and stressed that it had undertaken these activities in order to become a Consultative Party. Romania further mentioned their scientific cooperation with China, consisting of ten different projects.
- (201) Australia explained it had just signed a cooperative agreement with Romania giving Romania access to the Law Base in the Larsemann Hills.
- (202) Uruguay introduced IP 57 *Campaign of the Military Geographic Service in Antarctica* and IP 55 *1<sup>st</sup> Symposium about Scientific Research and Activities in Antarctica*, referring to the work on cartography developed in the Collins Glacier, a great participation of young scientists and implementation of SCAR recommendations and IPY general principles.
- (203) SCAR introduced IP 85 *Biodiversity in the Antarctic* on the issue of bio-diversity in relation to its concern over the establishment of non-native species in Antarctica. It discussed recommendations on which measures to implement (with regard to ships, cargo, tourism and other pathways to Antarctica) to avoid such a development. SCAR mentioned that they foresaw continued discussion on this matter with COMNAP.
- (204) Ukraine introduced IP 100 *Possibilities for environmental changes in monitoring with the assistance of tourist ship cruises staff/passenger photography in the Antarctic Peninsula Region* and expressed its hope that IAATO would be willing to cooperate on this issue.
- (205) The UK referred to IP 85 *Bio-diversity in the Antarctic* by SCAR and congratulated SCAR for their presentation and paper. According to many delegates the presentation made by SCAR was of excellent standard. The UK requested that SCAR resubmit its paper to the next ATCM as a working paper to the CEP. The UK asked for clarification of the proposal in the paper to develop an Antarctic Conservation Strategy.
- (206) SCAR explained that the present Conservation Strategy for Antarctica was based on IUCN and SCAR thinking of almost 20 years ago. Over the years much had happened and SCAR had now started to update the strategy. In this work SCAR

would work closely with the ATCM, CCAMLR, ACAP and others to develop a “holistic” approach to dealing with conservation issues in Antarctica. Conservation science was today a major activity worldwide and it was important that Antarctica did not lag behind.

- (207) Chile expressed support for the UK proposal of a continued discussion of IP 85 *Biodiversity in the Antarctic* by SCAR at the next ATCM and introduced IP 112 *Scientific Expedition to the South Pole 2004* thanking the UK and the US for their support in the activities conducted.
- (208) The Netherlands congratulated Australia and Romania on their Law-Racovita Station. According to the Dutch delegation such agreement underlines that there are alternative ways to achieve Consultative Status in the ATS by smaller countries without enough capabilities of their own, through the joint use of existing infrastructure. This alternative was applied by the Netherlands when it became a Consultative Party to the ATS some 15 years ago, without operating their own station.
- (209) Argentina introduced IP 86 *Ciencia Argentina en la Antartida* describing Argentinean activities carried out during 100 years of scientific activities in Antarctica.
- (210) The Russian Federation presented IP 46 *Results of Investigations under the subprogram, study and research of the Antarctic, of the federal program World Ocean in 2004* mentioning that its research program consisted of 14 projects. Russia highlighted results with regard to temperature trends in the eastern and western regions of Antarctica that contradicted the view of a general global warming. Russia also mentioned proposals for further work on the sub glacial Lake Vostok.
- (211) Ecuador introduced IP 87 *Report of the scientific research during the IX expedition 8 December 2003-24 February 2004* and IP 88 *Guia Geologica de los alrededores de la Estacion Cientifica Ecuatoriana Pedro Vicente Maldonado*. Ecuador reported that among other things the expedition had produced a geological guide to the area aimed at enabling a comparative geological study between Patagonia and Antarctica, preparing it as a teaching tool for students.
- (212) The following Information Papers were also submitted under Agenda Item 14: IP 1 (Poland); IP 5 (Brazil); IP 14 (India); IP 33 (Australia); IP 69 (SCAR); IP 91 (China); IP 99 (Ukraine); IP 104 (ASOC); and IP 118 (Republic of Korea).

### **Item 15: Operational issues**

- (213) Russia introduced WP 14, *Proposed Improvements to measures designated to prevent Environmental Damage in Antarctica*, indicating that in their view loopholes exist with regard to the issuing of permits for non-governmental expeditions travelling to Antarctica. Russia proposed that there should be mandatory exchange of information on any activities that any Party has authorized to take place in Antarctica. Their

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experience had showed that many non-governmental expeditions go to Antarctica despite not having obtained the required permits. They stressed that their proposal was an idea aimed at stimulating discussion to enable a formal proposal to be presented by Russia at the next ATCM meeting.

- (214) The UK expressed concern over the risk for duplication of work considering existing procedures with regard to exchange of information and stressed that the UK already provided all necessary information on non-governmental expeditions authorised by the UK to go to Antarctica. The UK referred to IP 15 presented by Germany and the Netherlands on the issue of creating an on line discussion forum for national permitting authorities. The UK underlined that this would provide an excellent way of finding out about whether non-governmental expeditions had been permitted or not.
- (215) Germany, the Netherlands and Japan thanked Russia for their proposal and reiterated that the issue should be further discussed at the next ATCM. Japan further noted the same concern as the UK.
- (216) Argentina agreed with the UK and thanked the Russian Federation for its work and pointed out that there are difficulties when private operators provide transport for tourists. In such cases one can not determine whether these people are scientists or tourists. Argentina mentioned that they had experience of non-governmental expeditions asking for humanitarian assistance in Antarctica. In such a situation it was impossible to deny assistance even though such expedition may not have appropriate permits. Argentina agreed with Russia and the UK that better tools needed to be developed.
- (217) COMNAP commented that the outcome of this discussion could have far reaching consequences for national operators and expressed its willingness to assist in implementing any system that Parties might find appropriate.
- (218) Germany briefly informed the Meeting of current engineering planning and provided a hand-out on the logistics concept for “Neumayer III” to all interested Parties.
- (219) Belgium introduced IP 73 *New Belgian research station in the Sor Rondane, Antarctica, 2004 - 05 BELARE site survey expedition*, and stated that following a Government decision in 2004 a survey expedition had been carried out in November-December last year. Belgium would now commence its work on a draft CEE to be presented at the next ATCM.
- (220) Japan offered to collaborate with Belgium in their upcoming activities on Antarctica.
- (221) India introduced IP 14 *India’s Antarctic Science Programme 2004-05* stating that their Antarctic programme was multi-institutional and multi-disciplinary and they welcomed the participation of other countries.
- (222) India introduced IP 80 *India’s Endeavor for a new Research Station in Antarctica – a Report*.

- (223) The United States thanked India for its advance notice of plans concerning its Antarctic Program in the Larsemann Hills area, noting WP 27 Rev I *Draft Antarctic Specially Managed Area (ASMA Management Plan for the Larsemann Hills, East Antarctica)* submitted by Australia, China and Russia. India was encouraged to collaborate in this effort to develop the ASMA.
- (224) UK thanked Belgium and India for their information papers and commented that a major recommendation of the UK/Australia/Peru joint inspection report concerned the building of new stations in Antarctica. This recommendation stated that the construction of stations at previously unoccupied sites in Antarctica should be minimized. The UK hoped that both Belgium and India would take account of this recommendation and address it when preparing the draft CEEs for their proposed new stations.
- (225) The following Working Papers were also submitted under Agenda Item 15: WP 33 (SCAR); and WP 34 (SCAR).
- (226) The following Information Papers were also submitted under Agenda Item 15: IP 19 (South Africa); IP 50 (Sweden); IP 51 (Sweden); IP 69 (SCAR); IP 79 (Ecuador); IP 91 (China); IP 92 (China); and IP 113 (Chile).

### **Item 16: Education issues**

- (227) The following Information Papers were submitted under Agenda Item 16: IP 34 (Australia); IP 55 (Uruguay); IP 78 (Ecuador); IP 104 (ASOC); IP 106 (Japan); and IP 114 (Chile).

### **Item 17: Exchange of Information**

- (228) Australia presented WP 29 containing the findings of the intersessional contact group that had been set up during the last ATCM.
- (229) One delegation wondered whether the formalized information exchange procedure should not only include information covered by Articles III and VII of the Treaty, but also such subjects as information on permitted activities and Parties' regulations at large. Australia found this a helpful intervention. The ICG had become aware that there were additional requirements, but had made the decision not to address these issues, since they were not included in the Terms of Reference, and limited their discussions to information to be exchanged according to Resolution 6 (2001).
- (230) Another delegation was concerned that there was no proper estimation of costs from an expanded, comprehensive database, and concluded that the ATCM needed to know the costs before approving such a proposal. It was further noted that various

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processes are in progress within the Antarctic “family”. Questions were also raised regarding specific details of the proposal.

- (231) COMNAP informed the Meeting that it was reviewing all its information systems for its internal exchange of operational information. These processes have some similarity with the information exchange system proposed for the ATCM. All programs developed by the COMNAP were based on open source software and would be made available to other parties in the Antarctic system. A report on COMNAP systems and future developments was in preparation and would be circulated. COMNAP believed that the programs are not expensive to develop but that the Parties would need to analyse and define their requirements. Australia pointed out that several items already included in the budget of the Secretariat were relevant in this matter.
- (232) The Meeting agreed that a new system was needed, that information will be submitted electronically, that consultation with other organizations will take place, and that the Secretariat should be charged to develop the system before the next ATCM. The Parties attached great importance to the design criteria identified in WP 29 and expressed the expectation that the desired system meet those criteria. Parties also agreed that the Secretariat should take into account appropriate existing systems in order to ensure that the desired system is developed in the most cost-effective manner possible. Decision 10 (2005) *Establishment of an Electronic Information Exchange System* was adopted.

### **Item 18: Biological Prospecting**

- (233) New Zealand presented WP 13 on Biological Prospecting in Antarctica. Sweden, the co-author of WP 13, underlined the point that the focus on Article III did not mean that other articles of the Treaty or the Protocol were considered any less important in relation to this issue. All regulations need to be considered.
- (234) Spain presented IP 8, which was largely scientific, but underscored the eventual negative impacts of biological prospecting in its conclusion. In Spain, pharmaceutical companies are already researching on drugs based on Antarctic material. Spain found it to be logical to first approach the subject on a legal basis and therefore supported WP13 and was ready to co-sponsor the draft resolution attached to it. UNEP presented IP 93 on Recent Developments in Biological Prospecting Relevant to Antarctica. The paper highlights developments in five international fora, including the newly established UN General Assembly Ad Hoc Open-ended Informal Working Group and the Ad Hoc Open-ended Working group on Access and Benefit Sharing of the Convention on Biological Diversity.
- (235) There was wide-ranging discussion on the issue of biological prospecting. Many delegations expressed support for the draft Resolution proposed by New Zealand

and Sweden, as it provided a good starting point for the ATCM's discussions of biological prospecting. Some expressed concern about the lack of a definition of biological prospecting, while others felt it was not necessary to have a specific definition at this point. It was underscored that other international groups – including a UN working group – were working on the same theme. Some delegations wanted to wait for the work of these other groups, while others thought it was important for the Antarctic Treaty System to take the lead on the question of biological prospecting in Antarctica. The Meeting approved Resolution 7 (2005) *Biological Prospecting in Antarctica*.

## **Item 19: Preparation of the XXIX Meeting**

### ***Item 19 (a). Date and Place***

- (236) The Meeting welcomed the kind invitation of the Government of the United Kingdom to host the XXIX Consultative Meeting in Edinburgh, June 12-23, 2006.

### ***Item 19 (b). Invitation of International and Non-Governmental Organisations***

- (237) The ATCM approved the participation of ACAP at CEP IX.
- (238) In accordance with the established practice, the Meeting agreed that the following organizations having scientific or technical interest in Antarctica should be invited to send experts to attend the ATCM: ACAP, ASOC, IAATO, IHO, IMO, IOC, IPY Programme Office, IUCN, UNEP, WMO and WTO.

### ***Item 19 (c). Invitation to Third States***

- (239) The ATCM decided to invite the Malaysian Government to send representatives to observe the XXIX Meeting.

### ***Item 19 (d). Preparation of the Agenda for the XXIX ATCM***

- (240) The Netherlands introduced WP 71 that addressed Article VII, paragraph 5 of the Antarctic Treaty as a spin-off from the liability discussion, while explaining that the issue is not limited to the question of liability. It aimed at drawing up an indicative list of activities covered by this article and to discuss this as a separate agenda item at the next ATCM. Parties agreed that this was an issue and that it could be useful to discuss it at the next ATCM. There was however, disagreement on whether it should be a separate agenda item.
- (241) The Meeting approved a preliminary agenda for the XXIX ATCM. This is attached as Annex K.

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### ***Item 19 (e). SCAR's verbal presentation***

- (242) Taking into account the valuable oral presentations at the previous ATCM's, the Meeting decided to invite SCAR to make another verbal presentation on scientific issues relevant to the XXIX ATCM.
- (243) The Meeting decided to send a message to the stations in Antarctica. The text of the message is reproduced as Annex J.
- (244) The draft Final Report was adopted by the Consultative Parties and the Meeting was closed on 17 June 2005.