



XXX Antarctic Treaty Consultative Meeting

New Delhi 30 April to 11 May 2007



WP 34

Agenda Item: ATCM 5

Presented by: Netherlands

Original: English

Identification of Activities Covered by Article VII.5 of the Antarctic Treaty

Identification of Activities Covered by Article VII.5 of the Antarctic Treaty

Working Paper submitted by The Netherlands

1. Background

At ATCM XXVIII, the Netherlands, Belgium, Chile, France, Germany, Italy and South Africa presented a working paper that addressed Article VII.5 of the Antarctic Treaty (AT).¹ The working paper aimed at drawing up an indicative list of activities covered by this Article. Parties agreed that this was an issue that could be useful to discuss at the next ATCM. This issue was raised as a spin-off from the liability discussion, but it is not limited to the question of liability.

Article VII.5 AT provides that:

Each Contracting Party shall, at the time when the present Treaty enters into force for it, inform the other Contracting Parties, and thereafter shall give them notice in advance, of

- a) all expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organized in or proceeding from its territory;*
- b) all stations in Antarctica occupied by its nationals; and*
- c) any military personnel or equipment intended to be introduced by it into Antarctica subject to the conditions prescribed in paragraph 2 of Article I of the present Treaty.*

This provision is an important element in the operation of the Antarctic Treaty System. References to this provision can be found in the 1991 Protocol on Environmental Protection to the Antarctic Treaty (ATPEP), including its Annex VI on Liability Arising From Environmental Emergencies. The provision defines the functional scope of the environmental protection regime of the ATPEP (Article 3.4), including the environmental impact assessment procedure (Article 8.2) and its Annex VI. For instance, the reference to Article VII.5(a) AT in Article 8.2 ATPEP indicates that each Party applies its domestic provisions on environmental impact assessments to “all expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organized in or proceeding from its territory”. However, the type of activities covered by Article VII.5 AT could usefully be clarified. In order to assess their liabilities under Annex VI, it is particularly important for operators in the Antarctic Treaty Area to be guided on this issue. Although Antarctic Treaty Consultative Parties expressed diverging views during the negotiations on Annex VI ATPEP with respect to its application to some activities, it also was apparent that there was agreement on its application to other activities.

2. The identification of activities covered by Article VII.5 AT

The objective of this paper is to launch a process to assist Parties in the identification of activities covered by Article VII.5 AT. A two-step process is envisaged.

The **first step** is aimed at the collection of practice of the ATPEP Parties in order to identify the practice that they have in common. It is suggested that ATCM XXX adopts a decision that requests Parties to compile a list of activities of which it has given advance notice in accordance with Article VII.5 of the Antarctic Treaty (see Annex I for a draft decision). Given the importance of Article VII.5 in relation to the ATPEP and the avoidance of excessive administrative burdens, it is proposed to limit the request to activities that have taken place after the entry into force of the ATPEP.

¹ ATCM XXVIII WP 71 entitled “Identification of Activities Covered by Article VII(5) of the Antarctic Treaty.

The **second step** could be the adoption by ATCM XXXI of an indicative list of activities covered by Article VII.5 AT (see Annex II for a draft decision). We believe it is not productive to work towards an authoritative interpretation by the ATCM of Article VII.5 and the list should therefore be of an indicative nature. In order to visualize the objective of such an indicative list, the practice of the Netherlands is reflected in the indicative list in Annex II. It goes without saying that the listing of any of these activities in this working paper is without prejudice to the ensuing discussions on this issue in the ATCM.

ANNEX I

Draft Decision X (2007)

**Identification of Activities Covered by Article VII.5 of the
Antarctic Treaty**

The Representatives,

Recalling Article VII.5 of the Antarctic Treaty,

Noting the references to Article VII.5 of the Antarctic Treaty in the Protocol on Environmental Protection to the Antarctic Treaty,

Desiring to identify examples of activities covered by Article VII.5 of the Antarctic Treaty,

Decide to request each Party to submit to the XXXIst Antarctic Treaty Consultative Meeting a list of the activities of which it has given advance notice in accordance with Article VII.5 of the Antarctic Treaty since the entry into force of the Antarctic Treaty Protocol on Environmental Protection.

ANNEX II

Draft Decision X (2008)**Indicative List of Activities covered by Article VII.5 of the Antarctic Treaty**

The Representatives,

Recalling Article VII.5 of the Antarctic Treaty,

Noting the references to Article VII.5 of the Antarctic Treaty in the Protocol on Environmental Protection to the Antarctic Treaty,

Desiring to identify examples of activities covered by Article VII.5 of the Antarctic Treaty,

Decide to adopt the indicative list of activities covered by Article VII.5 of the Antarctic Treaty annexed to this Decision.

Decide to evaluate the indicative list five years from the adoption of this Decision.

Annex: Indicative list of activities covered by Article VII.5 of the Antarctic Treaty

- **Logistic and other activities to support scientific research in the Antarctic Treaty Area:**
 - transport of persons and/or equipment by motor vehicles or other means over ice-sheets;
 - transport of persons and/or equipment by ships or aircraft, including to research stations and/or to sites for the conduct of research activities.

- **Scientific research activities in the Antarctic Treaty Area:**
 - research activities on board of an aircraft;
 - research activities on board of a vessel;
 - research activities on land;
 - research activities on ice sheets.

- **Tourism related activities in the Antarctic Treaty Area:**
 - tourism cruises by vessels making landings.